

CERTIFICATE.

SUPERIOR COURT OF THE UNITED STATES.

Octagonal Term, 1923.

No. 209.

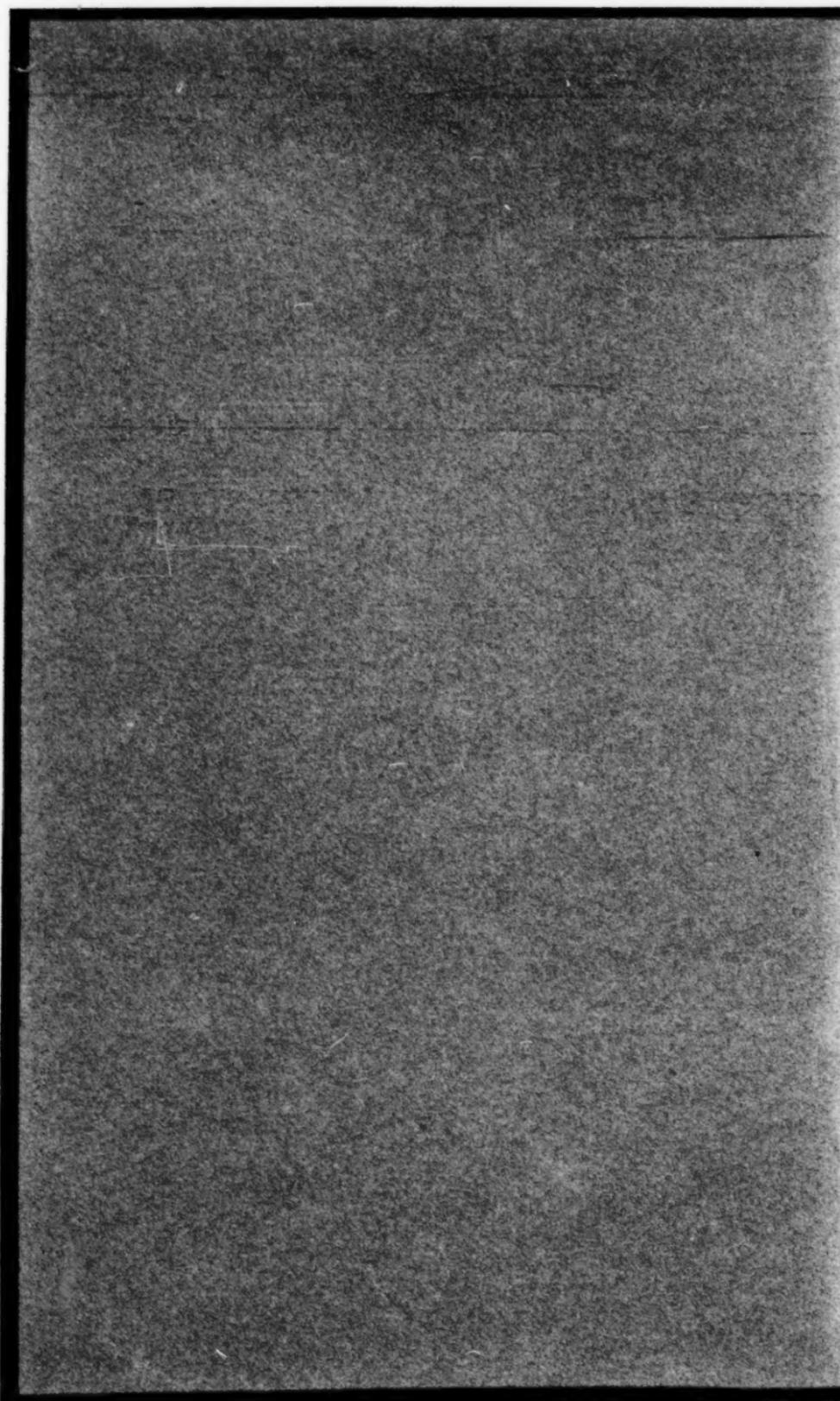
THE UNITED STATES OF AMERICA

vs.

BHAGAT SINGH THIND.

**ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.**

(28555)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 202.

THE UNITED STATES OF AMERICA

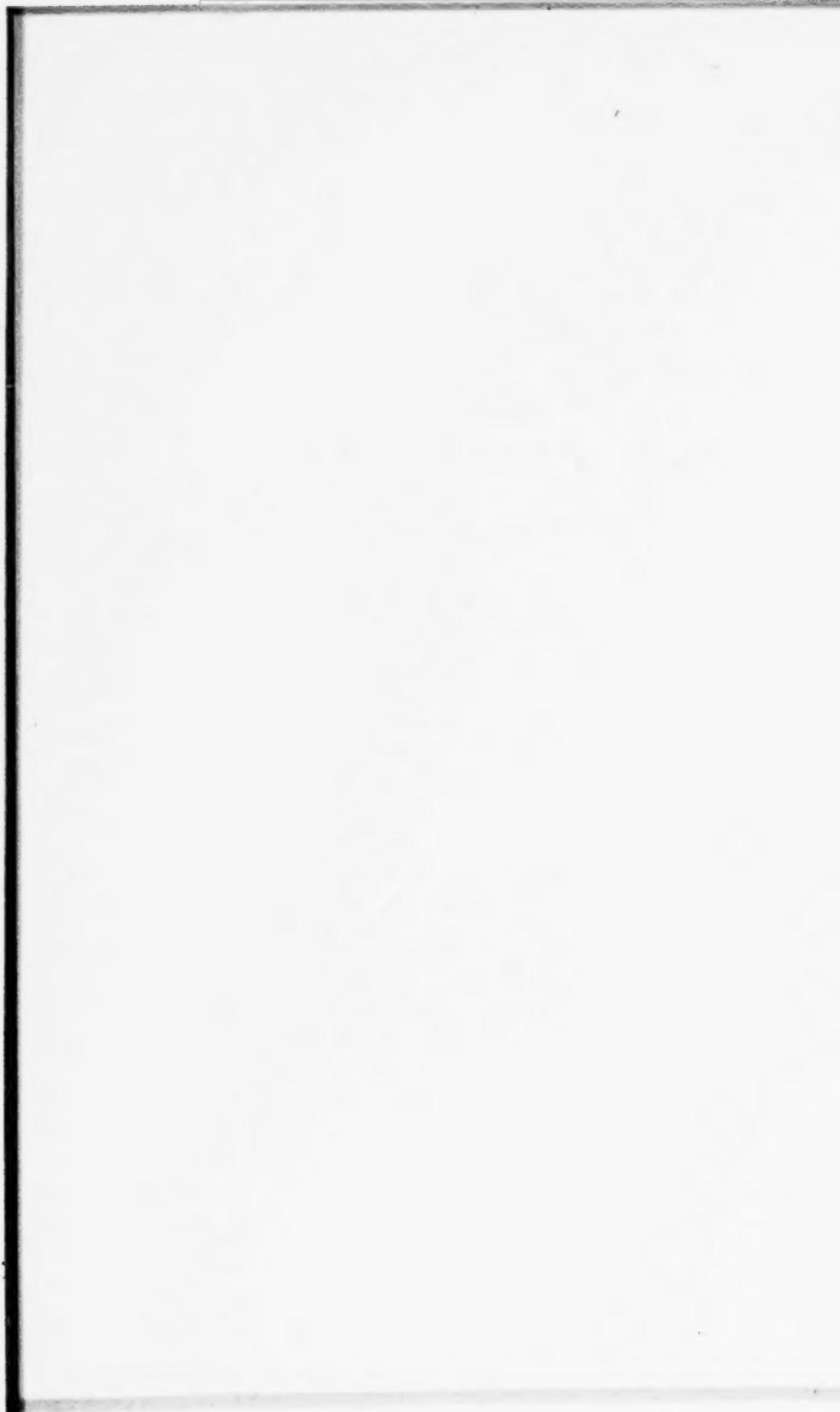
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INDEX.

	Original.	Print
Certificate from U. S. Circuit Court of Appeals for the Ninth Circuit	1	1
Statement of the case	1	1
Questions certified	3	2
Judges' signatures	3	2
Clerk's certificate	3	2
19602—22	1	



1 In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, PLAINTIFF APPELLANT,
vs.
BHAGAT SINGH THIND, DEFENDANT RESPONDENT. } No. 3745.

Upon appeal from the United States District Court for the District of Oregon.

CERTIFICATE OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT OF CERTAIN QUESTIONS OF LAW TO THE SUPREME COURT OF THE UNITED STATES, UNDER SECTION 239, JUDICIAL CODE.

Before GILBERT, HUNT, and MORROW, Circuit Judges.

This cause came to the Circuit Court of Appeals for the Ninth Circuit upon appeal from the United States District Court for the District of Oregon from a decree and order rendered in that court on March 28, 1921, dismissing a bill of complaint of the United States of America to cancel a certificate of citizenship issued to Bhagat Singh Thind in said court.

2 Bhagat Singh Thind is a high caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India. He was naturalized in the District Court of the United States for the District of Oregon on November 18, 1920, over the objection of the United States, which appeared by its naturalization examiner. Thereafter the United States filed a bill in equity to cancel his certificate of citizenship on the ground that it was illegally procured in that the applicant, being a Hindu, is not a white person and not lawfully entitled to naturalization. Thereupon the sufficiency of the bill was attacked and the following order was made in the District Court:

"This cause coming on for hearing on motion of defendant to dismiss plaintiff's bill of complaint, and it appearing that the complaint does not state facts sufficient to justify relief in equity, for the reason that said bill seeks cancellation of defendant's citizenship on the ground that said defendant is a Hindu, and a native of Punjab, India, and it further appearing that a Hindu is entitled under the laws of the United States to admission to citizenship,

"It is THEREFORE ORDERED, that plaintiff's bill be and it is hereby dismissed."

The questions presented on the appeal are whether a high caste Hindu, a native of India, of full Indian blood, born at Amrit Sar, Punjab, India, is a white person within the meaning of section 2169, Revised Statutes, a question upon which there has been diversity in the Circuit Courts of Appeals and in the District Courts of the United States; and whether such a Hindu, who had lawfully entered the United States prior to exclusion act of February 5, 1917, was thereafter eligible to be naturalized as a citizen of the United States.

The questions of law concerning which the Circuit Court of Appeals for the Ninth Circuit desires instructions from the Supreme Court are:

3 1. Is a high caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, a white person within the meaning of section 2169, Revised Statutes?

2. Does the act of February 5, 1917 (39 Stat. L. 875, section 3) disqualify from naturalization as citizens those Hindus, now barred by that act, who had lawfully entered the United States prior to the passage of said act?

(Sgd.) Wm. B. GILBERT,
 (Sgd.) Wm. W. MORROW,
 (Sgd.) Wm. H. HUNT,

*Judges of the United States Circuit Court
 of Appeals for the Ninth Circuit.*

Dated San Francisco, California, this 17th day of October, 1921.

(Endorsed:) No. 3745: In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, appellant, vs. Bhagat Singh Thind, appellee. Certificate of the United States Circuit Court of Appeals for the Ninth Circuit certifying certain questions or propositions of law to the Supreme Court of the United States under section 239 of the Judicial Code. Filed October 17, 1921. F. D. Monckton, clerk, by Paul P. O'Brien.

A true copy:

Attest, October 17, 1921.

[SEAL.]

F. D. MONCKTON, *Clerk.*
 By PAUL P. O'BRIEN,
Deputy Clerk.

(Endorsed on cover:) File No. 28,555. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 202. The United States of America vs. Bhagat Singh Thind. (Certificate.) Filed October 28th, 1921. File No. 28,555.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

UNITED STATES OF AMERICA, appellant,
v.
BHAGAT SINGH THIND. } No. 202.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES STATEMENT OF THE CASE.

The Circuit Court of Appeals for the Ninth Circuit has certified to this court the two following questions:

(1) Is a high-caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, a white person within the meaning of Section 2169, Revised Statutes?

(2) Does the Act of February 25, 1917, 39 Stat. 875, Section 3, disqualify from naturalization as citizens those Hindus, now barred by that act, who had lawfully entered the United States prior to the passage of said act?

This cause came to the Circuit Court of Appeals upon appeal by the United States from a decree rendered by the District Court for the District of Oregon dismissing a bill brought by the United States to cancel a certificate of citizenship issued to Bhagat

Singh Thind in said court. Bhagat Singh Thind is a high caste Hindu of full Indian blood and was naturalized in the District Court of the United States for the District of Oregon on November 18, 1920, over the objection of the United States. Thereafter, the United States filed a bill in equity to cancel his certificate of citizenship on the ground that it was illegally procured, in that the applicant, being a Hindu, is not a white person and not lawfully entitled to naturalization. The District Court dismissed the bill for the reason that the defendant was a Hindu and entitled under the laws of the United States to citizenship. He had lawfully entered the United States prior to the exclusion act of February 25, 1917, and the court held that that act did not prevent the naturalization of a person then lawfully in the United States (p. 1).

ARGUMENT.

A Hindu is not a white person within the meaning of Section 2169 of the Revised Statutes, and therefore not eligible for naturalization.

Inasmuch as this court has so recently considered in the *Ozawa case*, decided November 13, 1922, the general meaning of Section 2169 of the Revised Statutes, no extended discussion of the naturalization laws seems to be necessary. In that case it was held that Section 2169 is still in force and limits the right of naturalization to those who are "free white persons" within the meaning of that section, and a Japanese alien was therefore held ineligible. This court found that for many years the Federal and

State courts, in an almost unbroken line, had held that the words "white person" were meant to indicate only what is "popularly" known as the Caucasian race, and said:

"With the conclusion reached in these several decisions we see no reason to differ."

Mr. Justice Sutherland, speaking for the court, said:

"The determination that the words 'white person' are synonymous with the words 'a person of the Caucasian race' simplifies the problem, although it does not entirely dispose of it. Controversies have arisen and will no doubt arise again in respect of the proper classification of individuals in border line cases. The effect of the conclusion that the words 'white person' means a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship. Individual cases falling within this zone must be determined as they arise from time to time by what this Court has called, in another connection (*Davidson v. New Orleans*, 96 U. S. 97, 104) 'the gradual process of judicial inclusion and exclusion'."

The instant case shows the wisdom of the cautionary statement above quoted, for the court is now required to deal with one of the "border line cases," at least when considered ethnologically. It is the concensus of opinion of ethnologists that the high

caste Hindus, of which Bhagat Singh Thind is one, are members of what is commonly recognized as the Aryan family. These authorities are set forth in the elaborate and able brief filed by the respondent in this case and seem to afford little ground for challenge, but the decision in the *Ozawa case* did not establish a sharp line of demarcation but rather a zone of more or less debatable ground, leaving individual cases to be determined as they arose. After all has been said, the question still remains one of statutory construction, and primarily the point to be decided is the meaning which the words "free white persons" had in the minds of those who in 1790 first used those words in the statute of the United States. (Stat. 103, ch. 3.)

This question perhaps may be extended so as to include in its consideration the meaning attached to the words in 1870, when the naturalization laws were extended to aliens of African nativity and to persons of African descent, and in 1875, when the words "free white persons" were restored to the Revised Statutes after they had been inadvertently omitted from the first edition in 1873. The Act of July 14, 1870, 16 Stat. 254, provided "that the naturalization laws are hereby extended to aliens of African nativity and to persons of African descent." When that act was under discussion, an amendment was offered by Charles Sumner to strike out the word "white." But the amendment was rejected through the efforts of the Western senators, who objected that it would authorize the naturalization of "Asiatics." The Hindus

are undoubtedly Asiatics. *Congressional Globe* for 1869-70, Pt. 6, pp. 5121-5125, 5163, 5176-5177. In the discussion the word "Asiatics" was used repeatedly, and, while the senators who used the word may only have had in mind Chinese or Japanese rather than the people of India, nevertheless, the term "Asiatics" was that which seemed to express their policy of exclusion. At that time the only question which threatened to become one of practical importance was the Chinese question. There was practically no other Asiatic immigration.

By act of February 18, 1875, 18 Stat. 316, 318, ch. 80, the error in the first edition of the Revised Statutes in omitting the words "free white persons" was corrected. The committee on the Revision of the Laws had submitted a bill to correct numerous similar omissions. There was considerable discussion, and again the word "Asiatics" was the word commonly used in the debate. 3 Congressional Record, 1081. In the Senate Mr. Sargent said:

"We have the guaranty of the committee that the provisions of this bill simply restore the law as Congress intended it should be at the time they passed the Revised Statutes. Let that be done and it is fair. Less than that is unfair. When that is done, if the Senator desires to bring forward a bill which shall enable Asiatics to be naturalized, I shall be prepared to debate that question with him." (3 Cong. Rec. 1237.)

Similarly, Mr. Ferry said:

"Mr. President, it is obvious, after what has fallen from the lips of the Senator from Califor-

nia and the Senator from New York, that the real question after all can not be taken upon the amendment that I have proposed. That question would be whether the Senate would deliberately exclude from the operation of the naturalization laws all Asiatics, a third of the human race or more." (3 Cong. Rec. 1238.)

So the words inadvertently omitted in 1870 were restored as they had stood since 1790, apparently with the understanding that any change, if made, would necessitate a discussion and final settlement of the whole question of naturalizing Asiatics, a question which Congress obviously did not care to consider at that time. The words "free white persons" may be regarded therefore as having the same meaning which they had in 1790, in the light of the construction which had been placed upon them since, and as understood by Congress in 1875 when it refused to open up the question of admitting Asiatics to citizenship.

Naturalization is therefore restricted to "free white persons." Are these words merely words intended to exclude undesirables, or must they be considered as words affirmatively describing the class to be admitted. This question was answered in the *Ozawa case*, as follows:

"The provision is not that Negroes and Indians shall be *excluded* but it is, in effect, that only free white persons shall be *included*. The intention was to confer the privilege of citizenship upon that class of persons whom the Fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have

in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the Act would have been so varied as to include them within its privileges. As said by Chief Justice Marshall in *Dartmouth College v. Woodward*, 4 Wheat. 518, 644, in deciding a question of constitutional construction: 'It is not enough to say, that this particular case was not in the mind of the Convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception.' If it be assumed that the opinion of the framers was that the only persons who would fall outside the designation 'white' were Negroes and Indians, this would go no farther than to demonstrate their lack of sufficient information to enable them to foresee precisely who would be excluded by that term in the subsequent administration of the statute. It is not important in construing their words to consider the extent of their ethnological knowledge or whether they thought that under the statute the only persons who would be denied naturalization would

be Negroes and Indians. *It is sufficient to ascertain whom they intended to include and having ascertained that it follows, as a necessary corollary, that all others are to be excluded.*"

It is therefore necessary to determine whom they intended to include, not whom they intended to exclude. If they meant to include *only* men of the white races, does it follow that they intended to include *all* who could possibly be classed by *ethnologists* as white? We think not. The words "free white persons" meant to them men representative of a composite type, a combination of color, race, and social institutions, with which they were familiar, men who collectively had developed and were maintaining a civilization of which they themselves were a part, the civilization of white men.

According to the *Encyclopedia Britannica*, 11th ed., vol. 14, title "India," India is "inhabited by congeries of different races," and had according to the census of 1901 a population of over 294,000,000. This vast mass of people does not constitute a single nationality, neither is it divided into a number of different nations of distinct blood or distinct language. They are drawn into four well-marked elements: (1) The non-Aryan tribes; (2) the Aryan or Sanskrit-speaking race; (3) the great mixed population which has grown out of the fusion of the two previous elements; (4) and the Mahomedan invaders from the Northwest. "These four elements, however, have become inextricably mixed together, some predominating in one portion of the country, some in another, while all are

found in every province and native state." For this reason, it is not easy to determine what is a "Hindu of full Indian blood." (p. 382.)

The chief modern divisions of the population do not follow the lines of blood and language, but of religion and caste. Of the four elements just mentioned the oldest are the wild tribes of Central India, who represent, probably, the original inhabitants of the country and number about 11,000,000. Next come the Dravidians of the South, about 54,000,000. These are probably the aborigines. Thirdly, the Aryans inhabiting what is known as Hindustan proper, and of these only the Brahmans and Rajputs, about 20,000,000, are believed to be of pure Aryan blood. The remaining 135,000,000 natives represent the fusion of Aryan and non-Aryan elements. Fourthly, come the Mahomedans numbering some 62,000,000, many of whom are descendants of Arab, Afghan and Mogul invaders and the others are converts made to Islam in the course of centuries of Mahomedan rule. (p. 382.)

According to this same authority (p. 383) the chief Indian religions with the number of their followers are, approximately:

Hindu.....	207, 000, 000
Mahomedan	62, 000, 000
Bhuddist.....	9, 000, 000
Sikh.....	2, 000, 000
Jain.....	1, 300, 000
Christian.....	2, 900, 000
Parsee.....	94, 000
Animist.....	8, 500, 000

According to the linguistic survey of India, no fewer than 147 distinct languages are recorded as vernacular in different parts of India (p. 383).

The real beginning of the British Indian Empire dates from 1757, the Battle of Plassey, fought on the 23d of June of that year. The military genius of Clive and the administrative genius of Warren Hastings thereafter established upon a firm foundation the rule which has lasted ever since, but down to 1790 and for many years thereafter British domination in India was really exercised by the East India Company. India, with its millions of people, was regarded merely as a profitable field for commercial exploitation, a source of untold wealth. To be sure, Christian missionaries were working there, but their efforts were directed toward people whom they somewhat superciliously looked upon as "heathen," just as the Greeks regarded all non-Greeks as "barbarians." The people of India were a subject-race, and, while the ideals of liberty, equality and fraternity were being preached in Europe and America, there is no reason to believe that any one seriously extended their applications to the people of India, or believed that those people were of the kind to be assimilated in citizenship in Western civilization. Even the unselfish interest of the missionaries was rather in the welfare of souls in the life to come, than in political and social fellowship in this life.

Two years before the passage of the Act of 1790 Edmund Burke, addressing the House of Lords in the Warren Hastings trial, said:

"My Lords, the first description of people who are subjected virtually to the British empire through those mediums which I have described to you are the original inhabitants of Hindostan, who have in all time, and beyond all the eras which we use, (I mean always the two grand eras excepted,) been the aboriginal inhabitants and proprietors of that country,—with manners, religion, customs, and usages appropriated to themselves, and little resembling those of the rest of mankind. This description of men is commonly called Gentoos. The system and principle of that government is locality. Their laws, their manners, their religion are all local.

* * * "—These people are, of all nations, the most unalliable to any other part of mankind. They cannot, the highest orders of them, at least, cannot, come into contact with any other. That bond which is one of the chief instruments of society, and which, supporting the individual, connects the species, can have no existence with them: I mean the convivial bond. That race can be held to no other by that great link of life. No Hindoo can mix at meals even with those on whom he depends for the meat he eats. This circumstance renders it difficult for us to enter with due sympathy into their concerns, or for them to enter into ours, even when we meet on the same ground. But there are other circumstances which render our intercourse, in our mutual relation, very full of difficulty. The sea is between us. The mass of that element, which, by appearing to disconnect, unites

mankind, is to them a forbidden road. It is a great gulf fixed between you and them,—not so much that elementary gulf, but that gulf which manners, opinions, and laws have radicated in the very nature of the people. None of their high castes, without great danger to his situation, religion, rank, and estimation, can ever pass the sea; and this forbids, forever, all direct communication between that country and this. That material and affecting circumstance, my Lords, makes it ten times more necessary, since they cannot come to us, to keep a strict eye upon all persons who go to them. * * *

"It may be necessary just to state to your Lordships what a *caste* is. The Gentoo people, from the oldest time, have been distributed into various orders, all of them hereditary: these family orders are called castes; these castes are the fundamental part of the constitution of the Gentoo commonwealth, both in their church and in their state.

* * * "They are divided into four orders,—the Brahmins, the Chittery, the Bice, and the Soodur, with many subdivisions in each. An eternal barrier is placed between them. The higher cannot pass into the lower; the lower cannot rise into the higher. They have all their appropriated rank, place, and situation, and their appropriated religion too, which is essentially different in its rites and ceremonies, sometimes in its object, in each of those castes. A man who is born in the highest caste, which at once unites what would be tantamount in this country to the

dignity of the peerage and the ennobled sanctity of the episcopal character, the Brahmin, who sustains these characters, if he loses his caste, does not fall into an inferior order, the Chittery, the Bice, or the Soodur, but he is thrown at once out of all ranks of society. He is precipitated from the proudest elevation of respect and honor to a bottomless abyss of contempt,—from glory to infamy,—from purity to pollution,—from sanctity to profanation. No honest occupation is open to him; his children are no longer his children; their parent loses that name; the conjugal bond is dissolved. Few survive this most terrible of all calamities. To speak to an Indian of his caste is to speak to him of his all. * * *

"My Lords, these Gentoo people are the original people of Hindostan. They are still, beyond comparison, the most numerous. Faults this nation may have; but God forbid we should pass judgment upon people who framed their laws and institutions prior to our insect origin of yesterday! With all the faults of their nature and errors of their institutions, their institutions, which act so powerfully on their natures, have two material characteristics which entitle them to respect: first, great force and stability; and next, excellent moral and civil effects.

"Their stability has been proved by their holding on an uniform tenor for a duration commensurate to all the empires with which history has made us acquainted; and they still exist in a green old age, with all the reverence of antiquity, and with all the passion that

people have to novelty and change. They have stood firm on their ancient base; they have cast their roots deep in their native soil,—perhaps because they have never spread them anywhere else than in their native soil. Their blood, their opinions, and the soil of their country make one consistent piece, admitting no mixture, no adulteration, no improvement: accordingly, their religion has made no converts, their dominion has made no conquests; but in proportion as their laws and opinions were concentrated within themselves, and hindered from spreading abroad, they have doubled their force at home. They have existed in spite of Mahomedan and Portuguese bigotry,—in spite of Tartarian and Arabian tyranny,—in spite of all the fury of successive foreign conquest,—in spite of a more formidable foe, the avarice of the English dominion. (Writings and Speeches of Edmund Burke, 1901, Vol. IX, p. 367 *et seq.*)

These words were spoken by a friend of America, as well as of India and its people. They were probably well known to those who initiated our naturalization policy, for the Warren Hastings trial was one of the great events of that day. They show that at the time the first naturalization law was passed the Hindus were regarded as a people wholly alien to Western civilization and utterly incapable of assimilation to Western habits and customs, mode of life, political and social institutions. Is it to be believed that our forefathers had, even in a remote way, any idea that these people would ever

come to our land or wish to become our citizens? The words of our naturalization laws must be construed as affording a positive rule of inclusion, not a negative rule of exclusion. The men of 1790 never dreamed of an immigration from India, and, if that be true, it carries with it the inevitable conclusion that they did not intend to provide for the naturalization of people from India. They offered citizenship to men of the kind they knew and hoped and expected would come, not to those they did not know and did not expect to come. Citizenship has always been deemed a choice possession, and it is not to be presumed that our fathers regarded it lightly. It could only be obtained by those to whom it was given, and the men of 1790 intended it only for those whom they knew and regarded as worthy to share it with them,—men of their own type,—men in a general way living under the same social conditions, sharing or wishing to share the same political institutions and capable of entering into the life of this country in a spirit of sympathy and cooperation. The word "free" cannot be wholly ignored. It was not merely the opposite of African slavery. It referred to a type of civilization. All peoples whom they knew in this sense were of the type commonly and popularly called "free white" men, and it is undoubtedly true that the word "white" was by them indicative of type rather than color. Of course, it was exclusive of brown, yellow, red, and black, but, we contend,

inclusive only of such men described by the adjective "white" as belonged to a civilization known as the white civilization. Such was the civilization of Europe. While the population of Europe comprised many racial families, and differed in the dark skinned races of the Mediterranean and the fair blond Nordics, nevertheless, its civilization was that which had been developed by the race of white men and differed from the civilization of Asia in almost every distinguishing peculiarity. The white races had put their brand upon organized social and political life, and the social and political life, in turn, had put its assimilating mark upon all who had come within its influence.

Thus the term "white men" had come to represent men of the white civilization, as distinguished from the Eastern or Oriental civilization. This does not imply the drawing of any narrow or bigoted racial lines, but a broad classification inclusive of all commonly called "white" and exclusive of all not commonly so-called.

It could never have been contemplated by those who framed the statute that naturalization should be thrown open to the teeming millions of Asia, subject only to the presentation of a certificate by some student of ethnology to the effect that the particular applicant, whatever might be his customs, religion, habits of thought, language, could probably trace his ancestry back through thousands of years to membership in the race then coming to be called for the first time "Caucasian." It must be remem-

bered that Blumenbach first used this word in his classification of races in the year 1781. It is possible, but not probable, that the members of Congress in 1790 were unaware of Blumenbach's famous and workable classification, which endured to this day, but it is equally clear, indeed, we must assume, that they had in mind a definite conception of the type of men which they wished to become citizens of this country and which they described by the term "white men." In the case of *Sadar Bhagwab Singh* (246 Fed. 496), Judge Dickinson, in the District Court for the Eastern District of Pennsylvania, denied the application of a member of the Hindu race and wrote a long and scholarly opinion which seems to us to be sound. He said (p. 498):

"By a process of elimination we are thus brought or driven to the only remaining test, which is this: Our people, when the first naturalization act was passed, had a really definite idea of those to whom the privilege of citizenship was to be extended. The difficulty was, not in getting into accord upon the thought, but the difficulty was in finding a word or phrase which would express it. Resort was had, as the only recourse, to the common speech of the people, which provided a phrase ready at hand, which expressed the thought meant to be conveyed. The phrase was 'white person.' Its meaning was wholly conventional, and the convention evidenced by the meaning which the common man extracted from it. It made no pretense to be a term of science, and was not chosen with a view to scientific definiteness or accuracy of expression."

In *United States v. Balsara*, 180 Fed. 694, the Circuit Court of Appeals for the Second Circuit affirmed an order admitting to citizenship a Parsee. In *in re Halladjain*, 174 Fed. 834, Judge Lowell, in the Circuit Court of the District of Massachusetts, admitted to citizenship an Armenian. In *in re Mohan Singh*, 257 Fed. 209, the District Court for the Southern District of California admitted to citizenship a Hindu, declining to follow the opinion of Judge Dickinson in the *Sadar Bhagwab Singh case, supra*. In *in re Mozumdar*, 207 Fed. 115, the District Court for the Eastern District of Washington admitted to citizenship another Hindu. In these cases the different judges wrote long opinions, carefully construing the question from many angles. Indeed, the amount of learning and patient research which has been devoted to consideration of these questions has exhausted the literature upon the subject but has only added to its difficulty.

The *Ozawa case* has clarified the situation much, but, as intimated in that opinion, the field for discussion is still a wide one. We can only say, in summary, that while, in a general way, naturalization is only open to people belonging to the race commonly called Caucasian, nevertheless it is not open to all whom the research of scholars assumes to be of that race. The very name is a misnomer and an accident. The test must be a more open and obvious one than that. It is to be found not by the researches of scholarship but by

the practical application of the good sense and common understanding of ordinary men in the light of history and experience. We think that only such members of the Caucasian race should be held eligible for naturalization as may be found to be representatives of a white civilization. Viewed in this way the people of India, from whatever stock they may have sprung, cannot be included. Though they may have kept their blood pure for centuries, nevertheless, the centuries have removed them far from political fellowship with the white men of the Western World.

Neither in popular speech nor in literature has the term "white man" ever been used as appropriate to describe the Hindu. On the contrary, they are popularly classified as of the "brown" race. Whatever the Hindu may be to the ethnologist.—and ethnology was an almost unknown science in 1790,—in the popular conception he is alien to the white race and part of the "white man's burden." This phrase of Kipling, the great poet of the imperial destinies of the white race, has become part of the language and understanding of the English-speaking race. And, while the problem of British rule in India is not our affair, whatever may be the white man's burden, the Hindu does not share it, rather he imposes it. From Edmund Burke to Rudyard Kipling there has been no change in this respect. To call him a white man would be to give a judicial interpretation contrary to the universal acceptation of the term.

To sum up, I submit that, so far as the policy of exclusion from the benefits of naturalization can be expressed in a phrase, the expression in our laws "a free white person," to which the Congress has now adhered for a hundred and thirty years, denominates what is historically known as the men of the Western civilization. What is this Western civilization cannot be wholly determined upon either geographical, philological, or ethnological bases. It can only be determined in the light of history.

Western civilization, which now includes the Americas, is something more than European civilization; although the largest field of its operations was Europe. It is something more than the Aryan family; for the Semitic races,—including the Phoenician, Assyrian, Arabian, Chaldean, Aramaic and Hebrew,—which are not Indo-European or Aryan, are not excluded from it. Indeed, our Western civilization began with the Semitic races in Egypt, extended to Assyria and Chaldea, passed thence into Crete and Greece, and finally found its dominating expression in the great Roman Empire, which was essentially a Mediterranean civilization. Thence it proceeded northward, into the forests of Gaul, and crossed the Channel into England.

Western civilization may, therefore, include so much of the Near East as contributed to, and was assimilable, with the development of Western civilization of Greece and Rome. Language, literature, religion, government and races, both of the Aryan

and of the Semitic roots, became blended into the European civilization of Rome, and were extended by the genius of Columbus to the Americas.

This is the Western civilization, sometimes denominated the European civilization, which our fathers knew and from which they were willing to recruit the citizenship of the Republic; but the Far East, including India, was not regarded by them as a part of such civilization. To them, naturalization of the Far East Asiatics was unthinkable, because immigration of the teeming millions of Asia into America was likewise unthinkable.

All this is said with full appreciation of the wonderful civilization of the Far East, such as existed when our Government was formed, and still exists to this day in the great empires of Japan, China and India. Undoubtedly, our Western civilization has always maintained a supercilious and provincial attitude towards these older civilizations, which were in full flower before our Western civilization began, and which may possibly be in existence if and when our Western civilization shall wane. When Europe was inhabited by peoples who were little removed from the neolithic man and were virtually savages, China and India enjoyed a literature and art which, in some respects, have not yet been surpassed in our somewhat arrogant Western civilization. All this is true; but it does not alter the fact that the policy of America has been,

in the matter of citizenship, only to include those of the Western civilization, with which it is assimilable and of which it is one of the greatest products.

We do not think it can fairly be claimed that the Immigration Act of February 5, 1917, 39 Stat. 875, necessarily operates as matter of law to disqualify from naturalization Hindus who were at the time of the passage of that Act lawfully within the country, if they were eligible before. It does indicate, however, the attitude of Congress toward Asiatic people. It does not mention Hindus by name but prohibits immigration of natives of the continent of Asia, within certain limits of latitude and longitude which include the whole of India.

CONCLUSION.

The first question should be answered in the negative, and that makes it unnecessary to answer the second.

JAMES M. BECK,

Solicitor General.

ALFRED A. WHEAT,

Special Assistant to the Attorney General.

JANUARY, 1923.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

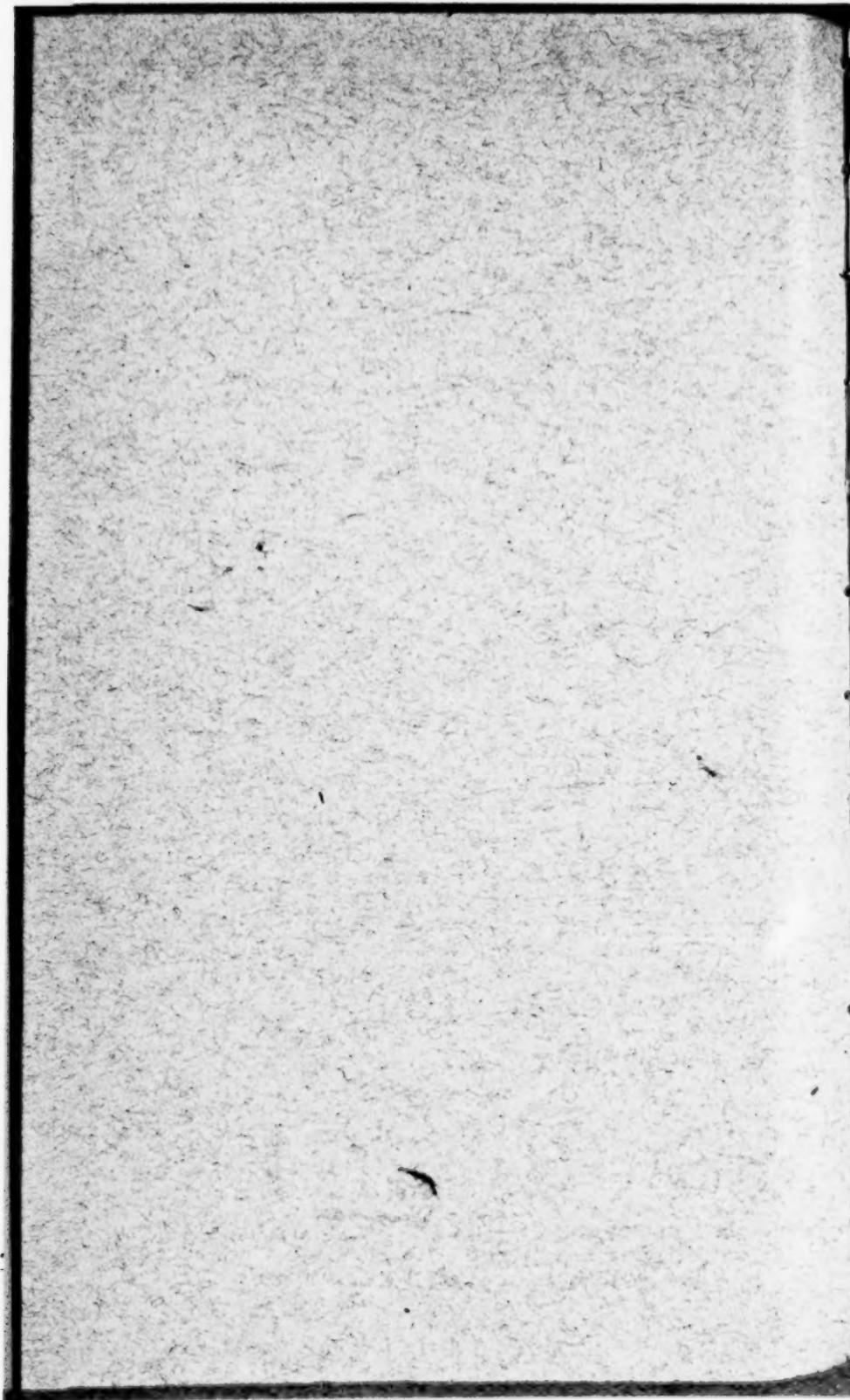
UNITED STATES OF AMERICA,
Plaintiff-Appellant,
vs.
BHAGAT SINGH THIND,
Defendant-Respondent.

No. [redacted]

UPON THE CERTIFICATION OF THE UNITED
STATES CIRCUIT COURT OF APPEALS
OF THE UNITED STATES FOR THE
NINTH CIRCUIT TO THE
SUPREME COURT OF
THE UNITED STATES.

Brief of Respondent

THOMAS MANNIX,
Attorney for Respondent.



INDEX.

I—Index, General Subjects—

	Page.
1. Certificate from the Circuit Court of Appeals for the Ninth Circuit.....	1-3
2. Judge Wolverton's Opinion.....	4-8
3. Descendants of Aryans belong to Caucasian Race	8-24
4. Interpretation of Section 2169 R. S.....	24-29
5. Act of Congress Feb. 5, 1917.....	29-34
6. Exhibit A	34-49

II—Index of Cases—

A	
In re Ah Yup, 5 Saw. 155.....	25, 26, 39
In re Alverto, 198 Fed. 688.....	27
Arthur v. Homer, 96 U. S. 137.....	30
B	
In re Bhagat Singh Thind, 268 Fed. 683.....	4
In re Balsara, 180 Fed. 694.....	5, 25, 26, 39
In re Buntaro Kumagai, 163 Fed. 922.....	25, 26
C	
In re Camille, 6 Fed. 256.....	25
Chae Chan Ping v. U. S., 130 U. S. 581; 32 L. Ed. 1068	8
D	
In re Dow, 226 Fed. 735.....	23
E	
In re Ellis, 179 Fed. 1002.....	27
H	
In re Halladjian, 174 Fed. 834.....	5, 25
K	
In re Knight, 174 Fed. 735.....	25
M	
Movius v. Arthur, 95 U. S. 144.....	30
In re Mohan Singh, 257 Fed. 209.....	5, 24
In re Mozumdar, 207 Fed. 115.....	25
In re Malari, 239 Fed. 416.....	27
In re Muddari, 176 Fed. 465.....	27
N	
In re Najour, 174 Fed. 735.....	26

	Page.
R	
In re Rodriguez, 81 Fed. 337.....	27
S	
Supervisors v. Lackawanna, 93 U. S. 619.....	30
In re Sardar, 246 Fed. 496.....	27
In re Saito, 62 Fed. 126.....	10, 25
In re San C. Po, 28 N. Y. Sup.....	25
U	
U. S. v. Claflin, 97 U. S. 546.....	30
U. S. v. Dry Goods, 17 How. 85.....	30
U. S. v. Mathews, 173 U. S. 381.....	30
W	
Washington v. Miller, 235 U. S. 422.....	30
Wilmot v. Mudge, 103 U. S. 217.....	30
Wong v. U. S., 163 U. S. 228.....	8
Y	
In re Young, 195 Fed. 645.....	27
III—Index, Authors—	
Anderson, Peoples of India.....	15, 16, 20, 21
Blumenbach, Life and Works.....	9, 40
Brinton, Races and Peoples.....	45
Bopps, Comparative Grammar.....	11
Enc. Britannica on subjects: Aryans, Ethnology, Anthropology, Indo-Germanic, India and kindred subjects cited variously.	
Folkmar, Dictionary of Races and People.....	43
Historians' History of World.....	21, 22
Huxley, Man's Place in Nature.....	10, 41
Keane, Man Past and Present.....	15
Keane, World's People	15
Max Mueller, Survey of Languages.....	12
Max Mueller, Home Aryans.....	12
Peschel, Races of Men.....	15, 21
Taylor, Origin of Aryans.....	11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA,

Plaintiff-Appellant.

vs.

BHAGAT SINGH THIND,

Defendant-Respondent.

No. 3745

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF OREGON.

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit of certain questions of law to the Supreme Court of the United States, under Section 239, Judicial Code.

Before: GILBERT HUNT and MORROW,
Circuit Judges.

This cause came to the Circuit Court of Appeals for the Ninth Circuit upon appeal from the United States District Court for the District of Oregon,

from a decree and order rendered in that Court on March 28, 1921, dismissing a Bill of Complaint of the United States of America to cancel a Certificate of Citizenship issued to Bhagat Singh Thind in said Court.

Bhagat Singh Thind is a high-caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India. He was naturalized in the District Court of the United States for the District of Oregon on November 18, 1920, over the objection of the United States, which appeared by its Naturalization Examiner. Thereafter the United States filed a Bill in Equity to cancel his Certificate of Citizenship on the ground that it was illegally procured in that the applicant, being a Hindu, is not a white person and not lawfully entitled to naturalization. Thereupon the sufficiency of the bill was attacked and the following order was made in the District Court:

"This cause coming on for hearing on motion of defendant to dismiss plaintiff's Bill of Complaint, and it appearing that the complaint does not state facts sufficient to justify relief in equity, for the reason that said bill seeks cancellation of defendant's citizenship on the ground that said defendant is a Hindu, and a native of Punjab, India, and it further appearing that a Hindu is entitled under the laws of the United States to admission to citizenship,

"It is THEREFORE ORDERED, that plaintiff's bill be and it is hereby dismissed."

The questions presented on the appeal are whether a high-caste Hindu, a native of India, of

full Indian blood, born at Amrit Sar, Punjab, India, is a white person within the meaning of Section 2169 Revised Statutes, a question upon which there has been diversity in the Circuit Courts of Appeal and in the District Courts of the United States; and whether such a Hindu, who had lawfully entered the United States prior to the Exclusion Act of February 5, 1917, was thereafter eligible to be naturalized as a citizen of the United States.

The questions of law concerning which the Circuit Court of Appeals for the Ninth Circuit desires instructions from the Supreme Court are:

1. Is a high-caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, a white person within the meaning of Section 2169 Revised Statutes?
2. Does the Act of February 5, 1917 (39 Stat. L. 875, Section 3) disqualify from naturalization as citizens those Hindus, now barred by that Act, who had lawfully entered the United States prior to the passage of said Act?

WILLIAM B. GILBERT,

WILLIAM H. HUNT,

WILLIAM W. MORROW,

Judges of the United States Circuit Court
of Appeals from the Ninth Circuit.

Dated: San Francisco, California, this —— day
of October, 1921.

JUDGE WOLVERTON'S OPINION.

For the convenience of the Supreme Court, the opinion of Judge Wolverton, 268 Fed. 683, is set forth herein:

"The applicant is a high-easte Hindu, born in Amritsar, Punjab, in the northwestern part of India. He is 28 years of age, and was admitted into this country on July 4, 1913, at Seattle, Wash. He entered the army, and served therein for six months at Camp Lewis, and was accorded an honorable discharge, his character being designated by the officer granting the discharge as "excellent." He was acting sergeant at the time of his discharge.

The testimony in the case tends to show that, since his entry into this country, the applicant's deportment has been that of a good citizen, attached to the Constitution of the United States, unless it be that his alleged connection with what is known as the Gadhri party or Gadhri Press, a publication put out in San Francisco, and the defendant Bhagwan Singh and others, prosecuted in the federal court in San Francisco for a conspiracy to violate the neutrality laws of this country, has rendered him an undesirable citizen. He was on friendly terms with Bhagwan Singh, Ram Chandra and others who had to do with the Gadhri Press, and, after Bhagwan Singh's conviction, while the latter was on his way to the penitentiary at McNeil Island, met him at Portland, at the depot, and subsequently visited him at the penitentiary three or four times.

He stoutly denies, however, that he was in any way connected with the alleged propaganda of

the Gadhri Press to violate the neutrality laws of this country, or that he was in sympathy with such a course. He frankly admits, nevertheless, that he is an advocate of the principle of India for the Indians, and would like to see India rid of British rule, but not that he favors an armed revolution for the accomplishment of this purpose. Obviously, he has modified somewhat his views on the subject, and now professes a genuine affection for the Constitution, laws, customs, and privileges of this country.

Were his allegiance to the laws and customs of this country dependent upon his protestations alone, I should not be inclined to give them credence. They are, however, strongly corroborated by disinterested citizens, who are most favorably impressed with his deportment, and manifestly believe in his attachment to the principles of this government. I have not attempted to analyze the testimony critically, because of its length, but, from a careful survey of it, I am impressed that his deportment here entitled him to become a citizen, unless it be that he is debarred from citizenship under the naturalization and immigration laws of Congress.

I am not disposed to discuss the question of one of first impression whether a high-class Hindu, coming from Punjab, is ethnologically a white person, within the meaning of Section 2169 of the Revised Statutes, as amended (Comp. St. Sec. 4358). I am content to rest my decision of the question upon a line of cases of which *In re Mohan Singh* (D. C.), 257 Fed. 209, *In re Halladjian*, 174 Fed. 834, and *United States vs. Balsara*, 180 Fed. 694, 103 C. C. A. 660, are

illustrative. I am aware that there are decisions to the contrary, but am impressed that they are not in line with the greater weight of authority.

A crucial question presented is whether the third section of the Immigration Act of Congress of February 5, 1917 (39 Stat. 874, 875 (Comp. St. 1918, Comp. St. 1918, Comp. St. Ann. Supp. 1919, Sec. 4289 $\frac{1}{4}$), operates as a repeal of Section 2169, R. S., in so far as it embraces the words "white persons." Section 3 excludes Hindus from admission into this country by territorial delimitations. The Act became effective May 1, 1917. Subsequently thereto, it became unlawful for a Hindu to enter the United States, and it may be confidently affirmed that no person who entered the United States unlawfully can be admitted to citizenship therein.

Bhagat Singh did not enter unlawfully. He came at a time when he had a right to enter, and was permitted to enter in pursuance of law. The Act in question does not purport to disturb his present domicile here, nor does it impose any further duty upon him by which he may maintain such a domicile. Neither does it require of him that he shall depart the country. Furthermore, I find nothing in the Act that evinces an intentment that it should operate retrospectively; that is, to render his lawful entry presently unlawful. We may inquire, then, respecting the status of Hindus lawfully domiciled in this country. Shall they remain here as they please, without the privilege of becoming citizens, or shall they be deported whence they came? If the latter, how and when? As to these questions, the law is silent, un-

less Section 2169 and the naturalization laws are still applicable.

Repeals by implication are not favored, and, unless there is manifest repugnancy between the latter and the former act, the former must remain operative. The argument is that, as Congress eliminated the words "white persons" from the Immigration Act, the act in question, it must be inferred that it intended to eliminate these words also from Section 2169, and thus to amend that section accordingly. This does not necessarily follow. Congress was dealing with the subject of immigration, and not naturalization, and it may well be that Congress designed thenceforth to exclude Hindus from entry into the United States, and still permit such as were domiciled here the privilege of being naturalized. In this light, I see no repugnancy between the Act and Section 2169 and other naturalization regulations.

I see no analogy in this Act to the Chinese Exclusion Act. To illustrate, by the sixth section of the Act of May 5, 1892 (27 Stat. 25, Comp. St. Sec. 4320), it was made the duty of Chinese laborers within the limits of the United States at the time of the passage of the Act, and who were entitled to remain therein, to apply to the collector of internal revenue of their respective districts, within one year, for certificates of residence; and it was further provided that any Chinese laborer who neglected or refused to comply with the provisions of the Act, or who, after one year from its passage, was found within the United States without such certificate, should be deemed and adjudged to be unlawfully therein, and should be deported accordingly. This

statute has been sustained, and the courts have held that the United States can forbid aliens coming within their boundaries and expel them from their territory. *Wong Wing v. United States*, 163 U. S. 228, 16 Sup. Ct. 977, 41 L. Ed. 140.

So it has been held that a certificate issued to a Chinese laborer, under the fourth and fifth sections of the Act of May 6, 1882 (22 Stat. 58), as amended July 5, 1884 (28 Stat. 115), conferred upon him no right to return to the United States of which he could not be deprived by a subsequent act of Congress. *Chae Chan Ping v. United States*, 130 U. S. 581, 9 Sup. Ct. 623, 32 L. Ed. 1068. This case is illustrative.

The present Act, however, does not deal with the Hindus and other races without the delimitations other than to debar their further admission into this country. It does not require such as are here to depart, and there being no manifest repugnancy between this and the naturalization laws, it must be concluded that Bhagat Singh is entitled to his naturalization."

THE DESCENDANTS OF THE ARYANS OF INDIA BELONG TO THE CAUCASIAN RACE.

Section 2169 of the Naturalization Act provides that the provisions thereof "shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent."

It may be assumed that the terms "Caucasian" and "white persons" are synonymous.

In the latter part of the Eighteenth Century Blumenbach divided the human race into five

groups, namely: the Caucasian, the Mongolian, the Ethiopian, the Malay and the American Indian, and while this classification has been the subject of much criticism, it has stood the test of time and amounts to a common-sense, every-day, usable classification. The same rule must apply to the classification of human beings as to any other subject. First, the different types are selected and then around each type is placed the typical group.

In defining the Caucasian race Blumenbach says (See Blumenbach's Life and Works, page 265):

"The Europeans, with the exception of the Lapps and the rest of the true Finns and the Western Asiatics this side of the Obi, the Caspian Sea and the Ganges, along with the people of North Africa, are Caucasians—in one word, the inhabitants nearly of the world known to the Ancient Greeks and Romans. They are more or less white in color, with red cheeks, and, according to the European conception of beauty in the countenance and shape of the skull, the most handsome of men."

Again in the same work (pages 265 and 350) Blumenbach classifies Hindus as members of the Caucasian race. It seems that Blumenbach coined the term "Caucasian" from a skull which came from the Caucasus mountains. Blumenbach believed that the natives living around the Caucasus mountains were the highest type of the white race.

Professor Huxley distinguishes four principal types, and he points out the marked physical characteristics of each. These types are the Australloid

(chocolate brown), Negroid (brown black), Mongoloid (yellow) and Xanthochroie (fair whites). To these he adds a fifth variety, the Melanochroic (dark whites). The "fair whites" are the type of the prevalent inhabitants of Northern Europe; and the "dark whites" of Southern Europe. All these physical differences do not exist in the case of each individual, and "innumerable varieties of mankind run into one another by insensible degrees;" but, taking the race or type as a whole, their peculiarities are sufficiently distinct to form the basis of well-recognized classification. Enc. Brit. tit. "Anthropology." Huxley, "Man's Place in Nature," page 372. In re Saito, 62 Fed. 126.

In the Melanochroic (dark whites) Huxley includes the Aryan races of India.

Speaking literally, color alone cannot be the only test of the white or Caucasian race. Strictly speaking, no one is white. The light-haired Swede or German approaches closest to strict whiteness and the dark Portuguese from the Azores or the dark Sicilian come almost within the twilight zone so far as color is concerned. While color is some evidence of race, the true test of race is blood or descent, and this raises the question whether or not the natives of Punjab, Rajputana, Kashmir, United Provinces, Bengal and other provinces of India are of white or Caucasian blood. Of this there seems to be no doubt if we are to take the word of the scientists.

In 1786 Sir William Jones made declaration that similarities between Sanskrit, Greek, Latin,

German and Celtic languages could only be explained on the hypothesis that these languages had a common parentage. Hegel called this the discovery of a new world. (See *Origin of the Aryans* by Isaac Taylor, page 2.)

In 1833—1835 Bopp's Comparative Grammar appeared, in which he classified all the European languages (except Bask, Finnic, Magyar and Turkish) in the same category with the languages of India allied to the Sanskrit. Bopp calls this group of languages Indo-Germanic. Max Mueller in his lectures on science and languages (1861) said:

"There was a time when the first ancestors of the Indians, the Persians, the Greeks, the Romans, the Slavs, the Celts and the Germans were living together within the same enclosures —nay, under the same roof. * * * It follows that before the ancestors of the Indians and Persians started south and the leaders of the Greek, Roman, Celtic, Teutonic and Slavonic colonies marched west, there was a small clan of Aryans settled probably on the highest elevation of Central Asia, speaking a language not yet Sanskrit, or Greek or German, but containing the dialectal germs of all."

Again, Max Mueller, after maintaining a near kinship of all so-called Aryan languages, asserted that the same blood runs in the veins of the English soldiers as in the veins of the "dark Benagelse," and has had the courage to assert that "there is not an English jury nowadays which, after examining the hoary documents of language, would reject the

claim of common descent and legitimate relationship between Hindu, Greek and Teuton." (See Max Mueller's Survey of Languages, page 29.)

And again Max Muller, in his book Home of Aryans (page 48) said:

"I speak, of course, of European nations only, and of those who employ Aryan languages, whether Celtic, Teutonic, Romanic, Slavonic or Greek. The ancestors of these people, nations and languages spent their nursery days together with such apparently heterogeneous races as Hindus, Persians, Armenians and others, far away from their present abodes, according to some, on the high plateau of Asia, according to others in more northern latitudes. But wherever their cradle stood, certain it is that they all carried away from their long-forgotten home their words for father and mother, sister and brother, dog, cow and horse, food and drink—nay, even for that unknown being to whom they addressed their simple prayers. These words are so little changed that even now, if carefully cleaned and placed under the microscope of the scholar, they appear almost identical."

In the Enc. Brit., Vol. 14, p. 487 (Handy Vol. Issue), it is stated:

"'Indo-Aryan' is the name generally adopted for those Aryans who entered India and settled there in prehistoric times, and for their descendants. It distinguishes them from the other Aryans who settled in Persia and elsewhere, just as the name 'Aryo-Indian' signifies those inhabitants of India who are Aryans, as

distinguished from other Indian races, Dravidians, Mundas and so on. * * * Most of the Indo-Aryans branched off from the common Aryan stock in the highlands Khokand and Badakshan, and marched south into what is now Eastern Afghanistan. Here some of them settled, while others entered the Punjab by the valley of the River Kabul. This last migration was a gradual process extending over several centuries, and at different epochs different tribes came in, speaking different dialects of the common language. The literary records of the latest times of this invasion show us one Indo-Aryan tribe complaining of the unintelligible speech of another, and even denying to it the right of Aryan-hood. * * * The tribe which spoke this dialect (Aryan) spread east and south, and their habitat, as so extended, between the Punjab and the modern Allahabad and reaching from the Himalaya to the Vindhya Hills in the south, became known to Sanskrit geographers as the Madhyadesa or 'Midland,' also called Aryavarta, or the 'home of the Aryans.' The language spoken here received constant literary culture, and a refined form of its archaic dialect became fixed by the labors of grammarians about the year 300 B. C., receiving the name of Sanskrit or 'purified,' in contradistinction to the folk-speech of the same tract and to the many Indo-Aryan dialects of other parts of India. * * * Sanskrit became the language of religion and polite literature, and thus the Midland, the native land of its mother dialect, became accepted as the true pure home of the Indo-Aryan people.

"Round the Midland, on three sides—west, south and east—lay a country inhabited, even in Vedic times, by other Indo-Aryan tribes. This tract included the modern Punjab, Sind, Gujarat, Rajputana with the country to its east, Oudh and Behar." (Page 487, Vol. 14; see also Vol. 14, page 495 Enc. Brit.)

Again in Enc. Brit., Vol. 14, page 382, it is stated:

"The census report of 1901 divided the population of India into seven distinct racial types: the Turko-Iranian type, represented by the Baluch, Brahmans and Afghans of the Baluchistan agency and the Northwest Frontier Province; the Indo-Aryan type, occupying the Punjab, Rajputana and Kashmir, and having as its characteristic members the Rajputs, Khatris and Jats, etc."

(NOTE—Bhagat Singh Thind is a native of Amritsar, Punjab, a short distance from the far-famed Lahore; this province being in the north-western part of India, on the frontier in close proximity to Afghanistan and Baluchistan, through which countries the original Aryans in their migration southward passed before entering the Punjab and India and spreading all over its northern parts.)

Peschel in *Races of Men* (Leipsic, 1874) said:

"No one disputes that the Hindu of high caste, whether in Bengal, in Madras, or in Seinde, or any other portion of his own country, is of the same Aryan origin as the old northern inhabitants of Iceland, and that the un-

known primordial ancestors of both must have dwelt in a common home.” (Page 20.)

Again he says on page 270:

“The Aryans spread themselves over the Punjab (home of Bhagat Singh Thind) and the plain of the Ganges at the expense of a barbarian aboriginal population, which they excelled in mental endowments and physical beauty.”

Keane, in *Man Past and Present*, pages 442 and 443, classifies the Hindus as Aryans. See also page 557, where Professor Keane says:

“Arrested for a time perhaps by the barrier of the Hindu-Kush and Suliman ranges, these wonderful proto-Aryan conquerors burst at last, probably through the Kabul river gorges, on to the plains of India and thereby added another world to the Caucasian domain.”

Again, Professor Keane, in his book *The World’s Peoples*, page 404, after classifying the Persians as Caucasians, which is a well-known fact, says:

“A large strain of ‘blue blood’ is conspicuous among the Kashmiri, the Jats, Sikhs, Rajputs, Dards, Siahposh, Kaffirs and others about the northwest frontiers.”

(Note that Bhagat Singh Thind is a Sikh, that being the religion of the inhabitants of the Punjab.)

Anderson in his book on the *Peoples of India* (London, 1913), at page 21 says:

“The Indo-Aryan type, with its home in the Punjab (original home of Bhagat Singh Thind), Rajputana and Kashmir, has as its most conspicuous members the Rajputs, Khattris and

Jats. These, in all but color (and even in color they are hardly more dusky than the races 'round the Mediterranean) closely resemble the well-bred European in type. In stature they are tall, their complexion is fair, eyes dark; hair on face plentiful; nose narrow and prominent, but not specially long. One significant peculiarity of this group is that there is little difference in physical character between the upper and lower classes. * * *

Again on page 27 Professor Anderson, who was connected with Cambridge University in England and had spent a great part of his life in India said:

"The theory, then, is that the homogeneous and handsome population of the Punjab (home of Bhagat Singh Thind) and Rajputana represents the almost pure descendants of Aryan settlers, who carried the Indo-European languages now prevailing over Northern India, just as our own emigrants took the English language to America."

And again on page 68 this learned author says:

"We now return to the fascinating story of the spread of the Indo-Aryan languages over the north and west of the peninsula. In the tale, captured from the patient study of words and idioms, and finding only occasional support from legend, and practically none from history, since history had not yet begun to exist, we get a singularly moving and interesting picture of the social existence of vanished tribes of men. We partly know and partly conjecture that there was once a race of men whom we may conveniently call Indo-Europeans who

spoke the parent-speech of the modern languages of Europe, Armenia, Persia and Northern India. Probably the Punjab in very early times was occupied by several immigrations of Indo-European folk, for in the earliest days of which we have any knowledge, the land of the Five Rivers is already the home of many Indo-Aryan tribes who live at enmity with one another, and have a fraternal habit of speaking of one another as unintelligible barbarians."

In the Enc. Brit., Vol. 2, p. 712, it is said:

"Of the stages in the occupation of the Iranian tableland by the Aryan people nothing is known. The people themselves have apparently no tradition of a time when they did not hold these territories (Spiegel, Arische Periode, p. 319). Though the Hindus have no tradition of their invasion of India, it is certain that they are not an indigenous people, and if they are not, it is clear they could have come in no other direction save from the other side of the Hindu-Kush. At the period of their earliest literature, which may be assigned to about 1000 B. C., they were still settled in the valley of the Indus and at this time the separation had probably not long taken place, the eastern portion of the stock having pushed their way along the Kabul Valley into the open country of the Indus."

And on page 749 of Vol. 2, Enc. Brit., it is said:

"The Aryans of India are probably the most settled and civilized of all Asiatic races. This type is found in its purest form in the north and northwest."

Thus the proposition is settled that the people residing in many of the states of India, particularly in the north and northwest, including the Punjab, belong to the Aryan race.

The Aryan race is the race which speaks the Aryan language. It has been pointed out by many scholars that identity of language does not necessarily prove identity of blood, for ordinarily anyone can learn a foreign language, especially in these latter days when time and space have been largely annihilated by modern means of communication and intercourse. A negro can learn the English language but that does not change his race. However, this argument has no application to the Aryan of India, for as far back as history goes the Aryans themselves have been the conquering race. No other race superimposed any foreign language upon them. The Aryan language is indigenous to the Aryan of India as well as to the Aryan of Europe.

Of course, if there was any evidence that the Aryans of India had been conquered and the Aryan language forced upon them by a foreign master, then the fact that a part of the people of India speak the Aryan language would not be strong evidence that they were originally of the Aryan race; but there being no evidence whatsoever that the so-called Aryans of India were ever conquered by any other race, then the fact that they speak the Aryan language is very strong evidence that they have sprung from the primordial Aryan race who spoke the primordial Aryan language.

There is considerable dispute among scholars as to whether the primordial Aryans had their home in Europe or in Asia. A great many Germans claim that the original Aryans came from Germany and some of the Italians claim that they lived in Northern Italy, and some of the Celts have also claimed that they came from Celtic countries, but all these claims seem to be contrary to the great weight of authority and sound judgment, as well as tradition and history, for it seems settled, as far as a matter of that kind can be settled, that the primordial Aryans came from some part of Central Asia, probably from Persia, or the headwaters of the Oxus and other rivers in that vicinity.

As to ethnology, the physical features of the Aryans of India are about the same as the modern Englishman or German. They are a tall, long-headed race with distinct European features, and their color on the average is not as dark as the Portuguese or Spanish and is lighter than the Moor. Just why the Aryan of India should be darker than the Aryan of Germany is probably due to environment. Undoubtedly the sun has some effect but it may be the law of natural selection has decreed that dark-skinned people have a better chance of survival in warmer countries, and it probably is that the law of evolution continually operating has selected the Melanchroic type of Caucasian as more adapted for the climate of India. (See Darwin, Origin of Species, page 30. Harvard Classics.)

As to the possible argument that there is more or less mixture of blood among the people of India, it must be remembered that India has an area of over 1,800,000 square miles and a population of over 300,-000,000, and that there are a great many more distinct races in India than there are in the United States. There are the pure Aryans living in the northern provinces, having been there from time immemorial. In certain provinces of the south there is a large population of the Dravidian race classified by Huxley as Mongoloid, and then in some more of the southern provinces there is a mixture of these Mongoloids with some Indians of Aryan extraction. But there is no "melting pot" in India in the sense that we use the term in the United States.

Anderson says in his *Peoples of India*, page 33, that the high-class Hindu regards the aboriginal Indian Mongoloid in the same manner as the American regards the negro, speaking from a matrimonial standpoint. The caste system prevails in India to a degree unsurpassed elsewhere. "Roughly, a caste is a group of human beings who may not intermarry, or (usually) eat with members of any other caste." (Anderson, *Peoples of India*, p. 35.)

The institutes of Manu declare that Brahma created the four great castes of India—the Brahman, the Kshatriya, the Vaieya and the Sudra. These were briefly the priests, the warriors and gentle folk, the traders and the servile classes of human society. It was most reprehensible for one of a higher caste to marry one of a lower caste. The greatest dis-

grace of that kind was a marriage between a Brahman woman and a Sudra man, the resultant offspring being relegated to the caste of Chandal. The unfortunate Chandal is described as the "lowest of mortals" and is condemned to live outside the village, to clothe himself in the garments of the dead, to eat from broken dishes, to execute criminals and to carry out the corpses of friendless men. (Anderson, Peoples of India, p. 39.)

The first three classes, while by no means equal, are yet admitted into one pale. They all partake in certain sacred rights to which peculiar importance is attached throughout the Code and they appear to form the whole community for whose government the laws are framed. The fourth class and the outcasts are no further considered than as they contribute to the advantage of the superior castes. The fourth class, the Sudra, is on very low scale and the penance for killing him is the same as for killing a cat, a frog, a dog, a lizard and various other animals. The Sudra is universally termed the servile class and it is declared that a Sudra, although emancipated by his master, is not released from a state of servitude, for it is added, "of the state which is natural to him, by whom can he be divested?"

In the Historians' History of the World, Vol. 2, p. 513, the penalties accruing to those who marry one of a lower caste and the offspring thereof are set forth.

It is obvious from this caste system prevailing in India that there was comparatively a small mix-

ture of blood between the different castes. Marriage in each caste, both by religion and law, was required to be within the caste under the penalty of social ostracism and disgrace. It would be just as disgraceful for a high-class Hindu to marry a member of one of the lower caste as it would be for an American gentleman to marry a member of the negro race, and obviously the offspring is subject to the same social degradation. This caste system has proven a most effective barrier to prevent a mixture of the Aryan with the dark races of India.

Besides the foregoing ethnological and philosophical aspects, it is a historical fact that the Aryans came to India probably about the year 2000 B. C. and conquered the aborigines. (See Historians' History of the World, Pol. 2, p. 475.)

In the Historians' History of the World, which book, owing to its authors, is a history of the highest and most unquestioned authority, Vol. 2, page 482, it is stated:

"Turning then to the Hindus, the easternmost branch of the great Indo-Germanic or Aryan race, we find, as was to be expected, the same utter obscurity as to origin that we have seen encompassing all questions of racial beginnings elsewhere. One perhaps is justified, however, in feeling that in the case of the Hindus secure traditions carry us one stage farther back than is the case, for example, with such races as the Egyptians and Chinese. For it is accepted as a clear historic fact that the Aryan race, who came to be at a very early day

—at least 1000 B. C.—the absolutely dominant force practically throughout the vast territory of India, had invaded this territory from the northwest; had come, in short, from that Central-Asiatic center of distribution which we have just spoken of as the long-accepted traditional cradle of the Aryan races. Whether at a still earlier period this migration had its source in more distant lands, including ultimately the Atlantic borders of Europe, is altogether problematical, but that the immediate source of invasion was Central Asia is not to be doubted.

The beginning of this invasion in which the Central-Asiatic Aryan people descended upon the northwestern regions of the land which we now term India, date from a vaguely determined period, which can hardly be more recent than 2000 years B. C. From this beginning the invaders spread farther and farther beyond the Ganges, occupying the great fertile plains of Central India, and ultimately the plateau of the Deccan, and crowding the original inhabitants into out-of-the-way corners of the land till they seem almost exterminated. This extermination of the original or non-Aryan population of India, however, was only relative, as even now there are many millions of their descendants still living in India; but the invaders became so utterly dominant and so enormously preponderant in numbers that the original inhabitants may practically be disregarded in treating of Indian history.”

INTREPRETATION OF SECTION 2169 REVISED STATUTES BY THE DIFFERENT FEDERAL COURTS.

District Judge Bledsoe, In re Mohar Singh, 257 Fed. 209, admitted a native of India to citizenship on the ground that he was a member of the Caucasian or white race coming within the scope of Section 2169 Revised Statutes. On page 212 this learned judge said:

*"Modern ethnologists use the terms 'white' and 'Caucasian' synonymously. The preponderance of respectable opinion includes the Hindus of India as members of the Aryan branch or stock of the so-called Caucasian or white race. See report of the Immigration Commission, Senate Document No. 662, 61st Congress, Third Session. I have been cited to no anthropological authorities which include the Hindus in any of the other races of mankind. They belong to the Aryan stock and therefore to the Caucasian or white race, because of certain physical and other peculiarities possessed by them and which indubitably mark their descent. Caucasians are white whether they live under the tropic sun and therefore have a very dark skin or abide in northern climes and possess a light one. The possession of a common racial stamp is the basis of classification. * * * In addition, I am advised by counsel for petitioner herein, and his statement is not challenged by the Government, that Hindus have been admitted to citizenship in the Southern District of Georgia, the Southern District of New York, the Northern District*

of California and the Eastern District of Washington by the courts of the United States and by the Superior Court of California in both San Francisco and Los Angeles. All these precedents are persuasive.

Judge Rudkin, *In re Mozumdar*, 207 Fed. 115, also admitted a native of India to citizenship and this after a most thorough investigation and review of authorities. Judge Rudkin said on page 117:

*"But whatever the original intent may have been, it is now settled by the great weight of authority, at least, that it was the intention of Congress to confer the privileges of naturalization upon members of the Caucasian race only. *In re Ah Yup*, 5 Sawy. 155, Fed. Cas. No. 104; *In re Saito* (C. C.), 62 Fed. 126; *In re Camille* (C. C.), 6 Fed. 256; *Matter of San C. Po*, 7 Misc. Rep. 471, 28 N. Y. Supp. 383; *In re Bain-taro Keimagai* (D. C.), 163 Fed. 922; *In re Knight* (D. C.), 171 Fed. 297; *In re Najour* (C. C.), 174 Fed. 735; *In re Halladjian* (C. C.), 174 Fed. 834; *U. S. v. Balsara*, 188 Fed. 694; 103 C. C. A. 660. It is likewise true that certain of the natives of India belong to that race, although the line of demarkation between the different castes and classes may be dim and difficult of ascertainment."*

In re Halladjian, Circuit Judge Lowell said (174 Fed. 834):

"Notwithstanding the opinion of Professor Ripley and others, both Hebrew History and an approximation to general type, show that the Hebrews are a true race, if a true race can be found widely distributed for many centuries.

Their origin is Asiatic. Yet the United States admits that they do not belong to the Asiatic or yellow race, and that they should be admitted to citizenship. If the aboriginal peoples of Asia are excluded from naturalization as urged by the United States it is hard to find a loop-hole for admitting the Hebrew. Again, if Hindus are to be expelled from naturalization as contended by the United States because many Englishmen treat them with contempt and call them "niggers" a like argument applies to those who have suffered most cruelly among all men on earth from European hatred and contempt. o o o Curiel expressly includes Armenians, as well as Hindus, in the Caucasian race, as distinguished from the Mongolian."

In *United States v. Balsara* (Second Cir.), 180 Fed. 694, Circuit Judge Ward, in the case of a Parsee, said:

*"On the other hand, counsel for Basara insist that Congress intended by the words 'free white persons' to confer the privilege of naturalization upon members of the white or Caucasian race only. This we think the right conclusion and the one supported by the great weight of authority. *In re Ah Yup*, 5 Sawy. 155, Fed. Cas. No. 104; *In re Saito* (C. C.), 6 Fed. 256; *Matter of San C. Po.*, 7 Misc. Rep. 471, 28 N. Y. Supp. 383; *In re Buntaro Kumagai* (D. C.), 163 Fed. 922; *In re Knight* (D. C.), 171 Fed. 297; *In re Najour* (C. C.), 174 Fed. 735; *In re Haladjian* (C. C.), 174 Fed. 834."*

In *Dow v. United States*, 226 Fed. 145 (Fourth Cir.), involving the naturalization of a Syrian, it is stated in the head-note:

"The term 'white persons,' as used in Rev. St. Sec. 2169 (Naturalization Act, March 26, 1790, c. 3, 1 Stat. 103, as amended by Act Feb. 18, 1875, c. 80, sec. 1, 18 Stat. 318 (Comp. St. 1913, sec. 4358), authorizing the naturalization of aliens being 'free white persons,' is not to be construed according to its import in 1790, and, in view of the course of legislative discussion and enactment, includes a Syrian."

District Judge Newman in Georgia, in the case of *In re Najour*, 174 Fed. 735, naturalized a Syrian on the ground that he was white and a Caucasian.

Judge Wolverton, *In re Ellis*, 179 Fed. 1002, also naturalized a Syrian on the ground that he was a Caucasian or white person. Judge Wolverton said:

"The most reasonable inference would be that the word 'white,' ethnologically speaking, was intended to be applied in its popular sense to denote at least the members of the white or Caucasian race of people."

See also the following cases illustrating the same general principles to the effect that section 2169 giving the right of naturalization to "free white persons" is equivalent to giving the right of naturalization to members of the Caucasian race, whether their original *habitat* was in Europe or Asia:

In-re Saito, 62 Fed. 126; *Sadar Bhagwab Singh*, 246 Fed. 496; *In-re Alverto*, 198 Fed. 688; *In-re Camille*, 6 Fed. 256; *In-re Malari*, 239 Fed. 416; *In-re Mozumdar*, 207 Fed. 115; *In-re Young*, 195 Fed. 645; *In-re Rodriguez*, 81 Fed. 337; *In-re Halladjian*, 174 Fed. 834; *U. S. v. Balsara*, 180 Fed. 694; *In-re Najour*, 174 Fed. 735; *In-re Muddari*, 176 Fed. 465;

In-re Knight, 171 Fed. 299; In-re Kanaka, 6 Utah 266.

The case of Ex parte Dow, 211 Fed. 486, 213 Fed. 355, holding otherwise was overruled in 226 Fed. 145.

In the aforesaid case the lower court reasoned that section 2169 of the Naturalization Acts so far as it regards "free white persons" must be construed in a geographical sense and that only European Caucasians were eligible for citizenship. The vice of this reasoning is illustrated in all the foregoing cases cited above.

The following facts are admitted with regard to Bhagat Singh Thind in the certificate sent to the Supreme Court of the United States by the Honorable Judges of the Circuit Court of Appeals:

1. Bhagat Singh Thind is a high caste Hindu of full Indian blood, born at Amritsar, Punjab, India. Being a high caste Indian and having no intermixture of Dravidian, or other alien blood, and coming from the Punjab, one of the most northwestern provinces of India, the original home of the Aryan conquerors, unless all the historical, ethnological and philological authorities cited in this brief are disregarded it must be held that Bhagat Singh Thind belongs to the Caucasian or white race. If Bhagat Singh Thind is not a free white person then no Hindu can claim citizenship in this country. His high caste and pure Aryan blood make of him a full-fledged Caucasian according to all the well-reasoned authorities.

This particular Hindu is a high class man in every respect, a veteran of the late war and a volunteer, who received high commendation from his superior officers for his distinguished services. His personal desirability is therefore apparent and as a general proposition a man who fights for the flag should be entitled to come under the flag. His love for America is evidenced by his conduct. To reverse this case would result in the disenfranchisement of a great number of Hindus in all parts of the Pacific Coast and other parts of the United States.

Judge Wolverton, Judge Rudkin and Judge Eledsoe, all under the jurisdiction of the Circuit Court of Appeals for this circuit, have already admitted Hindus to citizenship after an exhaustive study of the subject, and their opinions are entitled to the most respectful consideration.

ACT OF CONGRESS, FEB. 5, 1917

As to the Immigration Act touching Hindus, the Naturalization Act and the Immigration Act relate to two entirely different subjects and for that reason alone there could be no amendment to the Naturalization Act by implication.

These two statutes are not *in pari materia*. Statutes are *in pari materia* which relate to the same subject matter. When statutes are *in pari materia*, they are to be construed together, but when they are not *in pari materia*, they do not relate to the same subject matter and cannot be construed

together. (See Words and Phrases, Vol. 4. page 3478.)

In *United States v. Claflin*, 97 U. S. 546, 24 L. Ed. 1082, it is held that in order to repeal a statute by implication, the subject of the statutes must be the same, and even if the statutes are *in pari materia*, there shall be no repeal in the absence of express words, unless the implication of repeal is necessary.

Wilmot v. Mudge, 103 U. S. 217; 26 L. Ed. 536.

Repeals of statutes by implication are not favored and are never admitted where the former can stand with the new act, but only where there is a positive repugnancy between the statutes, or the latter is plainly intended as a substitute for the former.

U. S. v. 67 Pack, of Dry Goods, 17 How. 85; 15 L. Ed. 54.

Washington v. Miller, 235 U. S. 422; 59 L. Ed. 295.

See also to the same point: *Supervisors v. Lackawanna*, 93 U. S. 619; *Arthur v. Homer*, 96 U. S. 137; *Movins v. Arthur*, 95 U. S. 144.

It is further held that a later act will not be held to repeal a prior act unless there is a positive repugnancy between the provisions of the new law and the old, and even then only to the extent of such repugnancy.

U. S. v. Mathews, 173 U. S. 381; 43 L. Ed. 738.

Section 2169 Revised Statutes reads as follows:

"The provisions of this title shall apply to aliens being free white persons and to aliens of African nativity and to persons of African descent."

According to the contention of counsel the act to regulate the immigration of aliens to and the residence of aliens in the United States enacted in 1917 would repeal and amend this act so that it would contain the provision excluding free white persons from the different countries in Asia. Such a contention in the view of the foregoing authorities cannot be sustained.

The Immigration Act prohibits the immigration of idiots, imbeciles, insane persons, drunkards, paupers, vagrants and people suffering from tuberculosis and other diseases and also prohibits the immigration of Asiatics. Let us suppose, for instance, that a person afflicted with tuberculosis came to this country in 1910, or any other year prior to 1917 and applied for naturalization, would the fact that he belonged to a class that could not be admitted into the United States because of the Act of 1917 prevent him from becoming naturalized? The mere statement of the proposition shows its absurdity. There is no provision in the Naturalization Act itself to prevent persons afflicted with tuberculosis, or epilepsy, or even chronic alcoholism, from becoming American citizens, and the fact that this class of persons are precluded from coming into

the United States by the law of 1917 would not prevent persons of these classes from becoming citizens of the United States under the Naturalization Laws, if they came to the United States prior to 1917, and were otherwise qualified.

The same reasoning applies to Hindus. If a Hindu came to the United States prior to 1917 he would at least be in the same category, as far as the Immigration Law is concerned, with a consumptive person. Speaking figuratively he would be afflicted with the disease which might be termed "Hindooism," which disease would keep him out of the country under the law of 1917, but which would not preclude him from becoming a citizen of the United States if he came into the country before that time.

There is nothing in the Immigration Act which in any way impinges upon the Naturalization Act. If Congress had intended to interfere with the citizenship of Hindus, they would have said so. There is no Hindu naturalization exclusion act and we cannot create one by implication merely for the purpose of denying Bhagat Singh citizenship. The Immigration Act of 1917 only affects Hindus who attempt to come to this country after that time. If a Hindu or a consumptive, or a drunkard, or any of the other classes enumerated in the act have attempted to enter the United States since 1917, in violation of the act they may be deported or otherwise punished, as provided by the Act. Any person who comes to the United States in violation of the Immigration

Act of 1917, commits a crime against the United States and obviously could not become a citizen for that reason.

Therefore, the naturalization of aliens who came to the United States prior to 1917 is not affected by the Immigration Act. The purpose of the Immigration Act was prospective and not retroactive. A law cannot be presumed to be retroactive and there is nothing in the Immigration Act which makes it retroactive. In any of the naturalization cases heretofore tried, so far as known, this point has not been raised. We suppose for the reason that it is too plain for argument that neither the Naturalization Act or the Immigration Act in any way interfere with each other, nor is either act affected or modified by the other. It follows from this that Section 2169 is in full force and effect, and if it is in full force and effect the Immigration Statute cannot be considered in connection therewith.

We therefore respectfully petition your Honorable Court for the affirmance of District Judge Wolverton's judgment, granting citizenship to your respondent.

Respectfully submitted,

THOMAS MANNIX,
Attorney for Bhagat Singh Thind.

EXHIBIT "A."

BHAGAT SINGH THIND'S STATEMENT REGARDING HIS RACE.

ANTHROPOLOGY OF RACES.

Camp Lewis, Washington,
Second Company, First Development Battalion,
Depot Brigade,
December 9, 1918.

From: Private Bhagat Singh Thind, Camp Lewis
Washington.

The respondent is a native of India from Amritsar, in the province of Punjab, of the Hindu race. The peoples of Hindustan are divided into four castes—namely, the Brahman or priestly caste, the first or highest caste; the Kshatria or warrior caste; the Vaishas or merchant caste, and the Sudra caste. The three higher castes of India are of the pure Aryan blood. The sense in which we use the word Aryan in India, in the Kshatria sense, is the original people who came from the north and settled in India, the Aryan invaders. That means people of the Caucasian stock who are chiefly distinguished by certain physical characteristics of hair, structure of the body, etc. Any intermarriages in India must necessarily be between members of the same caste; otherwise, the person who goes outside of the caste becomes an outlaw. One who becomes an outlaw can never be reinstated to the Kshatria caste. He and his descendants will remain outside of the Kshatria caste forever.

I am, therefore, a pure Aryan, for which I further suggest the following:

In determining who is eligible to citizenship, the court is governed by the provisions of the revised statutes of the United States, Title XXX, Section 2169 (as amended in 1875), which section reads as follows: "The provisions of this title (naturalization) shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent." Citizenship is a privilege which may be granted to an alien but which cannot be demanded by him as a matter of absolute right.

The phrase "*free white person*" was used in the first naturalization act, entitled "An Act to Establish a Uniform Rule of Naturalization." Approved March 26, 1790 (1 Stat. 192). This Act provided, "That any alien being a free white person may be admitted to become a citizen, etc." The same language was used in sundry later modifications of the law. By Section 7 of the Amendatory Act of 1870, the naturalization laws were extended "to aliens of African descent." The revised statutes of 1873, Sec. 2165-2169, apparently by oversight or mistake, omitted the mention "*free white person*," thereby extending the Act to include all persons, irrespective of color or race. By the Act of February 18, 1875 (18 Stat. 318), passed "to correct errors and supply omissions in the revised statutes" Section 2169 (*supra*) was amended by again inserting the phrase in question, thus clearly showing, though

in an awkward manner, that the privilege of becoming a naturalized citizen was to be limited to those aliens mentioned, to-wit: "to aliens being *free white* persons and to aliens of African nativity and to persons of African descent."

Under this action of the Act, if the alien be so fortunate as to be of "*African nativity*" or even if he be of "*African descent*," then he is not to be further interrogated concerning his race, color or previous condition of servitude. Who is a person of "*African nativity*" or "*African descent*"? Is a Mongolian born in Africa of "*African nativity*"? If a Mongolian marries a native of Africa, are his descendants persons of "*African descent*"? It seems clear that the negro from Kongo, the brown pirate from the Barbary Coast and the native of Abyssinia—and, in fact, all native Africans and their descendants, by mere accident of birth, are made eligible for citizenship. If, however, the applicant be not thus fortunate in his choice of parents or place of birth, then, no matter how desirable or highly cultured he may be, he must be denied citizenship unless he can prove that he is both "*free*" and "*white*."

The mere fact that I am in the United States petitioning for citizenship conclusively proves that I am "*free*." Should eligibility to citizenship be determined by the color of the applicant's skin or by reference to the race to which he belongs? If the former is the proper test, then where is the color line to be drawn? Must the com-

plexion be "lily white," or if "brunettes" are to be included as well as "blondes," how dark may a brunette be without becoming black?

No human skin is literally white, and the degrees of colorization are innumerable, even in the same family, dependent upon occupation, climatic exposure, etc. The people of Southern Europe, although unquestionably white, are much darker-skinned than the inhabitants of Germany, for example. Since these facts are understood by all, it hardly seems possible that Congress ever intended to make the right of citizenship dependent upon the degree of colorization, to admit one member of a family and exclude another, and to place upon the courts the responsibility of drawing the color line by mere ocular inspection. Citizenship is one of the most sacred gifts of the State and the right thereto should rest upon a firmer foundation.

If the term "white person" refers to race rather than color, or absence of color, then what is the "white" race and of what peoples is it composed? A very slight study of anthropology will convince even the most skeptical person *that there is no clearly-defined "white" race.* Is it to be wondered at, then, if, after reading the naturalization act, the courts have halted and pondered over its meaning and then declared it to be ambiguous, unintelligible and difficult to construe and apply?

The phrase "white person" refers to race rather than to the color of the skin of the individual applicant, and includes all the peoples of the so-called

Caucasian or white race, and the Hindus of the four above-mentioned castes from the northwestern and eastern parts of India, all of which are members of this race according to (a) anthropological and ethnological, (b) philological, (c) lexicographical, and (d) judicial interpretation.

1. Although the decisions mentioned above are by no means uniform, they all seem to be based upon the theory that the phrase "white persons," as used in the Act, does not present a question of color, but one of race. There are two distinct views as to what is the "white" race referred to, which are, perhaps, best presented by quoting from the decisions where the questions are raised:

(1) Sawyer, Circuit Judge: "Words in a statute other than technical terms, should be taken in their ordinary sense. The words, "white person," as well argued by petitioner's counsel, taken in a strictly literal sense, constitute a very indefinite description of a class of persons where none can be said to be literally white, and those called white may be found of every shade from the lightest blonde to the most swarthy brunette. But these words in this country, at least, have undoubtedly acquired a well-settled meaning in common popular speech, and they are constantly used in the sense so acquired in the literature of the country, as well as in common parlance. As ordinarily used everywhere in the United States, one would scarcely fail to understand that the party employing the words "white person"

would intend a person of the Caucasian race." (In re Ah Yup, 1 Fed. Cases, p. 223.)

(2) Lacombe, Circuit Judge: "The phrase "free white persons" must be taken as used with the same meanings in the various successive statutes in which it appears. There is much force in the argument that Congress which framed the original act for the naturalization of aliens (Act April 14, 1802, c. 28, 2 Stat. 153) intended it to include only white persons belonging to those races whose emigrants had contributed to the building up on this continent of the community of people which declared itself a new nation.

No doubt such interpretation is unscientific, and, it may be, not always easy of application; but there are equally serious objections to accepting the words "white persons" as including all branches of the great race or family known to ethnologists as the Aryan, Indo-European, or Caucasian. To do so will bring in, not only the Parsees, of which race the applicant is a member, and which is probably the purest Aryan type, but also Afghans, Hindus, Arabs, and Berbera." (In re Balsara, 171 Fed. 294.) (The court, however, did admit the applicant, a Parsee, and its decision was affirmed on appeal. U. S. v. Balsara.)

It will be noted that both courts agreed in thinking race, not color, is the line of demarcation. Race is defined in the "Century Dictionary" primarily as: "An ethnical stock; a great division of mankind having in common certain distinguishing

physical peculiarities, and thus a comprehensive class appearing to be derived from a distinct primitive source."

The classification of mankind into various races and subdivisions is based upon obvious, natural and extrinsic differences and is not merely a haphazard arrangement. In the endeavor to properly classify races, the racial characteristics, such as the physical aspect, height and build, the color of the skin, eyes and hair, its texture, structure and arrangement are all taken into consideration. Of these characteristics perhaps the most important is the shape of the skull. In addition to the physical characteristics, language is an important element in determining the stock from which a people spring. There have been many classifications of man, which are as unsatisfactory as the decisions above cited, but which are all based upon more or less undisputable racial characteristics.

Of these classifications, perhaps the best known is that of Blumenbach, made in the year 1775, but first published in 1781. He divides mankind into five races: (1) the Caucasian or white race, (2) the Ethiopian or black race, (3) the Mongolian or yellow race, (4) the Malay or brown race, and (5) the American or red race. The name "Caucasian" was chosen as a race name on the supposition that the skull of a native inhabitant of the South Caucasian Mountains was typical of the most highly developed race.

Cuvier reduces the five classes of Blumenbach to three, preserving the Caucean, Ethiopian and Mongolian, but eliminating the Malay and Indian and including these two cases as subdivisions of the Mongolian. At the present time the classification accepted as the most satisfactory is that of Huxley, who distinguishes four distinct types, viz.: the Australoid (chocolate brown), Negroid (brown black), Mongoloid (yellow) and Xanthocroic (fair whites), adding also Melanochroic (dark whites). Numerous other classifications might be mentioned, some of which go to extremes by including as typical races what would appear to be merely subdivisions, but these classifications need not be here discussed. Many of these classifications will be found in the "Dictionary of Races and Peoples" (*supra*).

If the construction be narrowed to limit the right of naturalization to those Europeans who were coming to this country at the time of the adoption of the first naturalization act, as contended by the Government at one time, then since at the time of the adoption of the first act, no immigration was known except that from England, Ireland, Scotland, Wales, Germany, Sweden, France and Holland, it would follow that Russians, Poles, Italians, Greeks, Jews and others would not be eligible to citizenship, and as is stated by Ward, C. D. in *U. S. v. Balsara* (*supra*), "such construction is absurd." If, then, the meaning of the phrase is to be extended to include those mentioned, it must be on account of the fact that the phrase "white persons" refers to one

of the great racial classifications of mankind, i. e., the so-called Caucasian race.

It would take but very little argument to convince the ordinary person that the "distinguishing physical peculiarities" of the Turks or Tartars (of Mongolian origin) and of the Germans or Swedes (of Caucasian origin) are just as widely separated as are those of the American Indian and the negro. As both are natives of Europe, one must agree with Lowell, Circuit Judge, when he said, "There is no European or white race." (In re Halladjian, a lengthy and well-considered case.)

It may be stated that the term "Caucasian" was not in common use when the first naturalization act was adopted in 1790; it was in common use when that act was amended in 1875 and prior thereto, during the slavery debates in Congress, and, therefore, in any event, by again inserting the phrase "white person," Congress must be held to have intended to include all subdivisions of the race then commonly referred to on the floor of Congress as the white race, to-wit, the Caucasian race.

II. The questions as to what peoples are to be properly included in the so-called Caucasian or white race, has given rise to much discussion and wide differences of opinion. While all writers agree as to the inclusion or exclusion of the extremes, hardly any two agree as to where the line or demarcation should be drawn.

In December, 1910, Senator Dillingham, in behalf of the Federal Immigration Commission, trans-

mitted to Congress a "Dictionary of Races and Peoples," prepared by Dr. Daniel Folkmar. The attention of the naturalization department is called to this work for the reason that it was evidently prepared after a careful and impartial survey of all available authorities, and may be said to reflect the present views of the government on the questions presented. I quote from this work, as follows, the italics, however, being my own:

"Caucasian, Caucasic, European, Eurafican or white race. The name given by Blumenbach in 1775 to the white race or grand division of mankind as distinguished from the Ethiopian, Mongolian, American and Malay races. The term is now defined more suitably for our purpose in a broader sense by Brinton and Keane, namely, *to include all races, which, although dark in color or aberrant in other directions, are, when considered from all points of view, felt to be more like the white race than like any of the four other races just mentioned.*" (P. 30.)

"Huxley long ago marked out in this field two distinct physical races, the Xanthrocoid and the Melanochroid, or light and dark Caucasians." (P. 17.)

"Thus the dark Gallas of Eastern Africa are included, partly on linguistic grounds, partly because they have the regular features of the Caucasian; the Berbers of Northern Africa because of the markedly blonde and regular features found among them; the dark Hindus and other people of India still more emphatically because of their pos-

sessing an Aryan speech, relating them still more closely to the white race, as well as because of their physical type; and possibly the Polynesians, Indonesians and Ainos of the Pacific, because of their physical characteristics, although in this discussion these will be excluded from the definition." (P. 30.)

"Although the white race would be supposed to be the one best understood, it is really the one about which there is the most fundamental and sometimes violent discussion. The word "Caucasian," for instance, is in nearly as bad repute as "Aryan" at the present time among ethnologists. Yet, as Keane has said of the former term, both words may be preserved with conventional meanings, as are many of the early terms in natural history, although the early ideas associated with their use be discarded. While the word "Caucasian" has reference mainly to physical characters, "Aryan" will be used here as applying strictly to linguistic groupings." (P. 30.)

"The words "Aryan," "Indo-European" and the like are linguistic rather than ethnological." (P. 17.)

"It is safe to divide the Caucasian grand division of mankind on the basis of language into the Aryan, Semitic, Hamite, Caucasian, and Euskaric stocks. The last two possess agglutinative languages and are confined to the small areas of the Caucasus Mountains and the Pyrenees." (P. 18.)

"The foregoing quotations indicate that the Fed-

eral Immigration Commission believed that the Hindus were Caucasian Aryans.

Webster's New International Dictionary defines the term Aryan as: "A member of that Caucaasic race, one branch of which early occupied the Iranian plateau, while another branch entered India and conquered and amalgamated with the primitive inhabitants of that country: an Indo-Iranian."

"The Indian branch of this colony (Aryan) entered Hindustan as late as 2000—1500 B. C. The earlier Indo-Aryans had undoubtedly retained many pure Aryan traits. They were of medium height, oval faces, handsome regular features, symmetrical in body, the skull dolichocephalic, the complexion brunette but not brown, the eyes hazel, the hair wavy. This is the type of the highest Brahmans to-day, and throughout all their history they have exercised utmost care to preserve it intact. The institution of castes was undoubtedly established with this object in view." (Races and Peoples: Brinton, p. 69.)

Caste is defined by Webster's New International Dictionary as: (1) a race, stock, or breed of men or animals; (2) one of the hereditary classes into which the society of India is divided. The caste system is fundamental in Hinduism, referring, for its origin at least, to the time of the Aryan invasion of India. Orthodox Hinduism ascribes to the invaders four castes: the Brahman, or priestly; the Kshatriya, warrior or kingly; the Vaisas, mercantile and agricultural; the Sudra, artisan and laboring. . . .

The native name for "caste" signifies "color," and the system seems to have originated in the endeavor of the light-hued Aryans to preserve their racial purity." Some authorities add to the above a fifth caste, known as "Beran Sauker," including therein the mixed Hindu population.

The Hindu who transgressed against the racial and religious requirements by marrying outside of his caste became an outcast, of no particular caste, and not received either by those of his own caste or by those of his wife's. Although in the southern plains of India the caste restrictions were broken down to some extent by contact of the Aryan invaders with the native peoples, unquestionably they were strictly adhered to in the north, east and western part, where the Aryan invaders drove back the natives and took complete possession, to the exclusion of the natives, almost to the same extent that the Caucasian people of this country haev taken possession and driven out the native red men.

"So far as India is concerned, internal evidence of the old literature sufficiently proves that the Aryan invaders were white men, and that the high-caste Hindus are what they are by virtue of the Aryan blood which they have inherited. I am unable to discover good grounds for the severity of criticism, in the name of the "anthropologists" with which Professor Max Mueller's assertion that the same blood runs in the veins of the English soldier 'as in the veins of the dark Bengalese,' and that there is 'a legitimate relationship between Hindu,

Greek and Teuton' has been visited. So far as I know anything of anthropology, I should say that these statements may be correct literally, and probably are substantially. I do not know of any good reason for the physical differences between a high-caste Hindu and a Dravidian (native tribe) except the Aryan blood in the veins of the former; and the strength of the infusion is probably quite as great in some Hindus as in some English soldiers." (Man's Place in Nature, by Professor Huxley, pp. 281-282.)

"There is not an English jury nowadays which, after examining the hoary documents of language, would reject the claim of a common descent and a legitimate relationship between Hindu, Greek and Teuton." (Max Mueller, Survey of Languages.)

The mere fact that the aboriginal native peoples of India are not Caucasian does not mean that all of its peoples are to be excluded from that race. The Indians were the natives of this country, and history teaches us that our pioneers and frontiersmen intermarried with the natives, but those who boast of being descended from the first citizens would be surprised if they were told that they were not Caucasians. The Parsees immigrated some 1200 years ago from Persia into India, but Ward, Circuit Judge, in U. S. v. Balsara (*supra*), admitted a member of that race to citizenship. It may be said with equal force that the high-caste Hindus who settled in India some 4000 years ago are as distinct from the

natives of India as the people of this country are from the American Indian.

In many of the decisions, expressions will be found favorable to the conclusion which I have reached. In two cases, *In re Dolla* (*supra*) and *In re Mozumdar* (*supra*) the court admitted a Hindu to citizenship. In the latter case, determined by Judge Rudkin of the U. S. District Court for the eastern district of Washington, the court says:

"It is likewise true that certain of the natives of India belong to that race (Caucasian), although the line of demarcation between the different castes and classes may be dim and difficult of ascertainment. The difference between daylight and darkness is apparent to all, but where is the dividing line and where does daylight and darkness begin? So it is with the races of mankind where miscegenation has been in progress for generations. The system of castes had existed in India for upward of twenty centuries and religion and law have done much to maintain that system and to prevent corruption of blood, but experience teaches us that religion and of blood."

This is unquestionably true, but even so, there are certain tests to be applied, which, when taken in connection with the testimony of the applicant, enable the court to determine with a reasonable degree of certainty whether the individual is of the Caucasian race. These are (a) physical characteristics, (b) caste, (c) place of nativity, and (d) language.

(a) Physical characteristics. The high forehead,

tall build, and light color of the high-caste Hindus and other castes allied to them, appear in strong contrast with non-Caucasian races.

(b) Caste. The Hindu of the Brahman and Kshatria caste is more certain of being a pure Caucasian than one of any other caste.

(c) Place of nativity. The Hindu of the Kshatria caste born in the northern part of India is of the old Aryan race or stock.

(d) Language. Language is important to determine the place of nativity and whether or not related to the Aryan group.

Since citizenship is a privilege not to be lightly conferred upon any applicant, the proof offered in support of the application should be clear and convincing, particularly so when hard to verify. Directing the attention of the court, I find that I possess all of the physical characteristics attributed to those of the Aryan Hindus. I am willing and eager to undertake the responsibilities of citizenship, having shown my eagerness by buying Liberty bonds to help carry on America's part in the war and by enlisting in the fighting forces of the country. Therefore, I ask without hesitation for fair consideration of my plea by the court.

Respectfully submitted,

BHAGAT SINGH THIND.

UNITED STATES *v.* BHAGAT SINGH THIND.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 202. Argued January 11, 12, 1923.—Decided February 19, 1923.

1. A high caste Hindu, of full Indian blood, born at Amrit Sar, Punjab, India, is not a "white person", within the meaning of Rev. Stats., § 2169, relating to the naturalization of aliens. P. 207.
2. "Free white persons," as used in that section, are words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word "Caucasian" only as that word is popularly understood. P. 214. *Ozawa v. United States*, 260 U. S. 178.
3. The action of Congress in excluding from admission to this country all natives of Asia within designated limits including all of India, is evidence of a like attitude toward naturalization of Asians within those limits. P. 215.

QUESTIONS certified by the Circuit Court of Appeals, arising upon an appeal to that court from a decree of the District Court dismissing, on motion, a bill brought by the United States to cancel a certificate of naturalization.

Mr. Solicitor General Beck, with whom *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, was on the brief, for the United States.

Mr. Will R. King, with whom *Mr. Thomas Mannix* was on the brief, for Bhagat Singh Thind.

Section 2169, Rev. Stats., applies "to aliens being free white persons and to aliens of African nativity and to persons of African descent." It may be assumed that the terms "Caucasian" and "white persons" are synonymous.

In the latter part of the Eighteenth Century Blumenbach divided the human race into five groups, namely, the Caucasian, the Mongolian, the Ethiopian, the Malay and the American Indian; and, while this classification has been the subject of much criticism, it has stood the test of time and is practical. Blumenbach's Life and Works, p. 265; Enc. Brit., tit. "Anthropology;" Huxley, Man's Place in Nature, p. 372; *In re Saito*, 62 Fed. 126; Taylor, Origin of the Aryans, p. 2; Bopp's Comparative Grammar (1833-1835); Mueller, Survey of Languages, p. 29; Mueller, Home of Aryans, p. 48; 14 Enc. Brit., pp. 382, 487; Peschel, Races of Men (Leipsic, 1874), pp. 20, 270; Keane, Man: Past and Present, pp. 442, 443, 557; Keane, The World's Peoples, p. 404; Anderson, The Peoples of India (London, 1913), pp. 21, 27, 68; 2 Enc. Brit., pp. 712, 749.

The foregoing authorities show that the people residing in many of the states of India, particularly in the north and northwest, including the Punjab, belong to the Aryan race. The Aryan race is the race which speaks the Aryan language. It has been pointed out by many scholars that identity of language does not necessarily prove identity of blood, for ordinarily anyone can learn a foreign language. But this argument has no application to the Aryan of India; for, as far back as history

goes, the Aryans themselves have been the conquering race. No other race superimposed any foreign language upon them. The Aryan language is indigenous to the Aryan of India as well as to the Aryan of Europe.

The high-class Hindu regards the aboriginal Indian Mongoloid in the same manner as the American regards the negro, speaking from a matrimonial standpoint. The caste system prevails in India to a degree unsurpassed elsewhere. "Roughly, a caste is a group of human beings who may not intermarry, or (usually) eat with members of any other caste." Anderson, *Peoples of India*, p. 35.

With this caste system prevailing, there was comparatively a small mixture of blood between the different castes. Besides ethnological and philological aspects, it is a historical fact that the Aryans came to India, probably about the year 2000 B. C., and conquered the aborigines. See 2 *Historians' History of the World*, p. 475.

Upon the interpretation of § 2169, Rev. Stats., by the different federal courts, see *In re Singh*, 257 Fed. 209; *In re Mozumdar*, 207 Fed. 115; *In re Halladjian*, 174 Fed. 834; *United States v. Balsara*, 180 Fed. 694; *Dow v. United States*, 226 Fed. 145; *In re Najour*, 174 Fed. 735; *In re Ellis*, 179 Fed. 1002.

The Naturalization Act and the Immigration Act of February 5, 1917, relate to two entirely different subjects, and for that reason alone there could be no amendment to the Naturalization Act by implication.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This cause is here upon a certificate from the Circuit Court of Appeals, requesting the instruction of this Court in respect of the following questions:

"1. Is a high caste Hindu of full Indian blood, born at Amrit Sar, Punjab, India, a white person within the meaning of section 2169, Revised Statutes?

"2. Does the act of February 5, 1917, (39 Stat. L. 875, section 3) disqualify from naturalization as citizens those Hindus, now barred by that act, who had lawfully entered the United States prior to the passage of said act?"

The appellee was granted a certificate of citizenship by the District Court of the United States for the District of Oregon, over the objection of the naturalization examiner for the United States. A bill in equity was then filed by the United States, seeking a cancellation of the certificate on the ground that the appellee was not a white person and therefore not lawfully entitled to naturalization. The District Court, on motion, dismissed the bill (268 Fed. 683) and an appeal was taken to the Circuit Court of Appeals. No question is made in respect of the individual qualifications of the appellee. The sole question is whether he falls within the class designated by Congress as eligible.

Section 2169, Revised Statutes, provides that the provisions of the Naturalization Act "shall apply to aliens, being free white persons, and to aliens of African nativity and to persons of African descent."

If the applicant is a white person within the meaning of this section he is entitled to naturalization; otherwise not. In *Ozawa v. United States*, 260 U. S. 178, we had occasion to consider the application of these words to the case of a cultivated Japanese and were constrained to hold that he was not within their meaning. As there pointed out, the provision is not that any particular class of persons shall be excluded, but it is, in effect, that only white persons shall be included within the privilege of the statute. "The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular

races been suggested the language of the act would have been so varied as to include them within its privileges," (p. 195) citing *Dartmouth College v. Woodward*, 4 Wheat. 518, 644. Following a long line of decisions of the lower federal courts, we held that the words imported a racial and not an individual test and were meant to indicate only persons of what is *popularly* known as the Caucasian race. But, as there pointed out, the conclusion that the phrase "white persons" and the word "Caucasian" are synonymous does not end the matter. It enabled us to dispose of the problem as it was there presented, since the applicant for citizenship clearly fell outside the zone of debatable ground on the negative side; but the decision still left the question to be dealt with, in doubtful and different cases, by the "process of judicial inclusion and exclusion." Mere ability on the part of an applicant for naturalization to establish a line of descent from a Caucasian ancestor will not *ipso facto* and necessarily conclude the inquiry. "Caucasian" is a conventional word of much flexibility, as a study of the literature dealing with racial questions will disclose, and while it and the words "white persons" are treated as synonymous for the purposes of that case, they are not of identical meaning—*idem per idem*.

In the endeavor to ascertain the meaning of the statute we must not fail to keep in mind that it does not employ the word "Caucasian" but the words "white persons," and these are words of common speech and not of scientific origin. The word "Caucasian" not only was not employed in the law but was probably wholly unfamiliar to the original framers of the statute in 1790. When we employ it we do so as an aid to the ascertainment of the legislative intent and not as an invariable substitute for the statutory words. Indeed, as used in the science of ethnology, the connotation of the word is by no means clear and the use of it in its scientific sense as an equiva-

lent for the words of the statute, other considerations aside, would simply mean the substitution of one perplexity for another. But in this country, during the last half century especially, the word by common usage has acquired a popular meaning, not clearly defined to be sure, but sufficiently so to enable us to say that its popular as distinguished from its scientific application is of appreciably narrower scope. It is in the popular sense of the word, therefore, that we employ it as an aid to the construction of the statute, for it would be obviously illogical to convert words of common speech used in a statute into words of scientific terminology when neither the latter nor the science for whose purposes they were coined was within the contemplation of the framers of the statute or of the people for whom it was framed. The words of the statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken. See *Maillard v. Lawrence*, 16 How. 251, 261.

They imply, as we have said, a racial test; but the term "race" is one which, for the practical purposes of the statute, must be applied to a group of living persons now possessing in common the requisite characteristics, not to groups of persons who are supposed to be or really are descended from some remote, common ancestor, but who, whether they both resemble him to a greater or less extent, have, at any rate, ceased altogether to resemble one another. It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today; and it is not impossible, if that common ancestor could be materialized in the flesh, we should discover that he was himself sufficiently differentiated from both of his descendants to preclude his racial classification with either. The question for deter-

Opinion of the Court.

261 U.S.

mination is not, therefore, whether by the speculative processes of ethnological reasoning we may present a probability to the scientific mind that they have the same origin, but whether we can satisfy the common understanding that they are now the same or sufficiently the same to justify the interpreters of a statute—written in the words of common speech, for common understanding, by unscientific men—in classifying them together in the statutory category as white persons. In 1790 the Adamite theory of creation—which gave a common ancestor to all mankind—was generally accepted, and it is not at all probable that it was intended by the legislators of that day to submit the question of the application of the words "white persons" to the mere test of an indefinitely remote common ancestry, without regard to the extent of the subsequent divergence of the various branches from such common ancestry or from one another.

The eligibility of this applicant for citizenship is based on the sole fact that he is of high caste Hindu stock, born in Punjab, one of the extreme northwestern districts of India, and classified by certain scientific authorities as of the Caucasian or Aryan race. The Aryan theory as a racial basis seems to be discredited by most, if not all, modern writers on the subject of ethnology. A review of their contentions would serve no useful purpose. It is enough to refer to the works of Deniker (*Races of Man*, 317), Keane (*Man: Past and Present*, 445-6), Huxley (*Man's Place in Nature*, 278) and to the Dictionary of Races, Senate Document No. 662, 61st Cong., 3d sess., 1910-1911, p. 17.

The term "Aryan" has to do with linguistic and not at all with physical characteristics, and it would seem reasonably clear that mere resemblance in language, indicating a common linguistic root buried in remotely ancient soil, is altogether inadequate to prove common racial origin. There is, and can be, no assurance that the so-called

Aryan language was not spoken by a variety of races living in proximity to one another. Our own history has witnessed the adoption of the English tongue by millions of Negroes, whose descendants can never be classified racially with the descendants of white persons notwithstanding both may speak a common root language.

The word "Caucasian" is in scarcely better repute.¹ It is at best a conventional term, with an altogether fortuitous origin,² which, under scientific manipulation, has come to include far more than the unscientific mind suspects. According to Keane, for example, (*The World's Peoples*, 24, 28, 307, *et seq.*) it includes not only the Hindu but some of the Polynesians,³ (that is the Maori, Tahitians, Samoans, Hawaiians and others), the Hamites of Africa, upon the ground of the Caucasic cast of their features, though in color they range from brown to black. We venture to think that the average well informed white American would learn with some degree of astonishment that the race to which he belongs is made up of such heterogeneous elements.⁴

¹ *Dictionary of Races, supra*, p. 31.

² *2 Encyclopaedia Britannica* (11th ed.), p. 113: "The ill-chosen name of Caucasian, invented by Blumenbach in allusion to a South Caucasian skull of specially typical proportions, and applied by him to the so-called white races, is still current; it brings into one race peoples such as the Arabs and Swedes, although these are scarcely less different than the Americans and Malays, who are set down as two distinct races. Again, two of the best-marked varieties of mankind are the Australians and the Bushmen, neither of whom, however, seems to have a natural place in Blumenbach's series."

³ The United States Bureau of Immigration classifies all Pacific Islanders as belonging to the "Mongolic grand division." *Dictionary of Races, supra*, p. 102.

⁴ Keane himself says that the Caucasic division of the human family is "in point of fact the most debatable field in the whole range of anthropological studies." *Man: Past and Present*, p. 444.

And again: "Hence it seems to require a strong mental effort to sweep into a single category, however elastic, so many different

The various authorities are in irreconcilable disagreement as to what constitutes a proper racial division. For instance, Blumenbach has five races; Keane following Linnaeus, four; Deniker, twenty-nine.⁶ The explanation probably is that "the innumerable varieties of mankind run into one another by insensible degrees,"⁷ and to arrange them in sharply bounded divisions is an undertaking of such uncertainty that common agreement is practically impossible.

It may be, therefore, that a given group cannot be properly assigned to any of the enumerated grand racial divisions. The type may have been so changed by intermixture of blood as to justify an intermediate classification. Something very like this has actually taken place in India. Thus, in Hindustan and Berar there was such an intermixture of the "Aryan" invader with the dark-skinned Dravidian.⁸

In the Punjab and Rajputana, while the invaders seem to have met with more success in the effort to preserve

peoples—Europeans, North Africans, West Asiatics, Iranians and others all the way to the Indo-Gangetic plains and uplands, whose complexion presents every shade of color, except yellow, from white to the deepest brown or even black.

"But they are grouped together in a single division, because their essential properties are one, . . . their substantial uniformity speaks to the eye that sees below the surface . . . we recognize a common racial stamp in the facial expression, the structure of the hair, partly also the bodily proportions, in all of which points they agree more with each other than with the other main divisions. Even in the case of certain black or very dark races, such as the Bejas, Somali, and a few other Eastern Hamites, we are reminded instinctively more of Europeans or Berbers than of negroes, thanks to their more regular features and brighter expression." *Id.* 448.

⁶ Dictionary of Races, *supra*, p. 6. See, generally, 2 Encyclopædia Britannica, (11th ed.), p. 113.

⁷ 2 Encyclopædia Britannica, 11th ed., p. 113.

⁸ 13 Encyclopædia Britannica, (11th ed.), p. 502.

their racial purity,⁸ intermarriages did occur producing an intermingling of the two and destroying to a greater or less degree the purity of the "Aryan" blood. The rules of caste, while calculated to prevent this intermixture, seem not to have been entirely successful.⁹

It does not seem necessary to pursue the matter of scientific classification further. We are unable to agree with the District Court, or with other lower federal courts, in the conclusion that a native Hindu is eligible for naturalization under § 2169. The words of familiar speech, which were used by the original framers of the law, were intended to include only the type of man whom they knew as white. The immigration of that day was almost exclusively from the British Isles and Northwestern Europe, whence they and their forbears had come. When they extended the privilege of American citizenship to "any alien, being a free white person," it was these immigrants—bone of their bone and flesh of their flesh—and their kind whom they must have had affirmatively in mind. The succeeding years brought immigrants from Eastern, Southern and Middle Europe, among them the Slavs and the dark-eyed, swarthy people of Alpine and Mediterranean stock, and these were received as unquestionably akin to those already here and readily amalgamated with them. It was the descendants of these, and

⁸ *Id.*

⁹ 13 Encyclopaedia Britannica, p. 503: "In spite, however, of the artificial restrictions placed on the intermarrying of the castes, the mingling of the two races seems to have proceeded at a tolerably rapid rate. Indeed, the paucity of women of the Aryan stock would probably render these mixed unions almost a necessity from the very outset; and the vaunted purity of blood which the caste rules were calculated to perpetuate can scarcely have remained of more than a relative degree even in the case of the Brahman caste."

And see the observations of Keane (*Man: Past and Present*, p. 561) as to the doubtful origin and effect of caste.

other immigrants of like origin, who constituted the white population of the country when § 2169, reënacting the naturalization test of 1790, was adopted; and there is no reason to doubt, with like intent and meaning.

What, if any, people of primarily Asiatic stock come within the words of the section we do not deem it necessary now to decide. There is much in the origin and historic development of the statute to suggest that no Asiatic whatever was included. The debates in Congress, during the consideration of the subject in 1870 and 1875, are persuasively of this character. In 1873, for example, the words "free white persons" were unintentionally omitted from the compilation of the Revised Statutes. This omission was supplied in 1875 by the act to correct errors and supply omissions. C. 80, 18 Stat. 318. When this act was under consideration by Congress efforts were made to strike out the words quoted, and it was insisted upon the one hand and conceded upon the other, that the effect of their retention was to exclude Asiatics generally from citizenship. While what was said upon that occasion, to be sure, furnishes no basis for judicial construction of the statute, it is, nevertheless, an important historic incident, which may not be altogether ignored in the search for the true meaning of words which are themselves historic. That question, however, may well be left for final determination until the details have been more completely disclosed by the consideration of particular cases, as they from time to time arise. The words of the statute, it must be conceded, do not readily yield to exact interpretation, and it is probably better to leave them as they are than to risk undue extension or undue limitation of their meaning by any general paraphrase at this time.

What we now hold is that the words "free white persons" are words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word "Caucasian" only as that

word is popularly understood. As so understood and used, whatever may be the speculations of the ethnologist, it does not include the body of people to whom the appellee belongs. It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other European parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry. It is very far from our thought to suggest the slightest question of racial superiority or inferiority. What we suggest is merely racial difference, and it is of such character and extent that the great body of our people instinctively recognize it and reject the thought of assimilation.

It is not without significance in this connection that Congress, by the Act of February 5, 1917, c. 29, § 3, 39 Stat. 874, has now excluded from admission into this country all natives of Asia within designated limits of latitude and longitude, including the whole of India. This not only constitutes conclusive evidence of the congressional attitude of opposition to Asiatic immigration generally, but is persuasive of a similar attitude toward Asiatic naturalization as well, since it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants.

It follows that a negative answer must be given to the first question, which disposes of the case and renders an answer to the second question unnecessary, and it will be so certified.

Answer to question No. 1, No.

END

OF

CASE